

time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–305–AD.

Applicability: Model 777–200 and 777–300 series airplanes, line numbers 001 through 400 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a possible source of ignition in a flammable leakage zone, which could result in an undetected and uncontrollable fire in the wheel well or wing trailing edge, and a possible fuel tank explosion, accomplish the following:

Replace and Seal

(a) Within 18 months after the effective date of this AD, for all four boost pumps of the main fuel tanks, replace the socket contacts in positions 2, 4, 6, and 7 with new, high-quality gold-plated contacts; and seal the backshell of the connector with potting compound; per the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–28–0028, dated October 24, 2002.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30338 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 03–225; FCC 03–265]

Request To Update Default Compensation Rate for Dial-Around Calls From Payphones

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this *Notice of Proposed Rulemaking* (NPRM), the Commission commences a proceeding to consider a new default compensation rate for dial-around calls from payphones. The *NPRM* seeks comment on whether to modify the default rate of \$0.24 per-call for dial-around payphone calls established more than four years ago.

DATES: Comments are due on or before January 7, 2004. Written comments by the public on the proposed information collections are due on or before January 7, 2004. Reply comments are due on or before January 22, 2004. Written reply comments by the public on the proposed information collections are

due on or before January 22, 2004. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before February 6, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein must be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 Twelfth Street SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street NW., Washington, DC 20503, or via the Internet to *Kim_A.Johnson@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Jon Stover, Wireline Competition Bureau, Pricing Policy Division, (202) 418–0390. For additional information concerning the information collection(s) contained in this document, contact Judith Boley Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 03–225, RM No. 10568, adopted on October 28, 2003, and released on October 31, 2003. The complete text of this NPRM is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the NPRM may be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at qualexint@aol.com.

Synopsis of Notice of Proposed Rulemaking

1. The *NPRM* grants petitions for rulemaking filed by the American Public Communications Council (APCC)

and the RBOC Payphone Coalition (BellSouth Public Communications, Inc., SBC Communications, Inc., and the Verizon telephone companies). The Commission asks whether the \$0.24 rate still ensures that all payphone service providers (PSPs) are fairly compensated for each and every completed call as mandated by 47 U.S.C. 276, or whether a change in the default rate is mandated.

2. According to cost studies submitted by APCC and the RBOC Payphone Coalition, per-payphone costs have not changed dramatically since 1998, but falling call volumes at payphones have caused a major increase in per-call costs at marginal payphones. These two groups of PSPs assert that the current dial-around compensation rate is no longer adequate to ensure widespread deployment of payphones because \$0.24 no longer provides cost recovery for PSPs.

3. The petitions for rulemaking were opposed by six interexchange carriers (IXCs) and the Attorney General of the State of Texas. While they do not assert that IXCs can implement targeted call blocking at this time, some IXCs contend that the Commission should not change the default compensation rate because market forces by themselves are able to determine the appropriate level of payphone deployment. These IXCs will be afforded an opportunity to demonstrate how PSPs can be effectively compensated in a fully deregulated market.

4. In finding it unnecessary to issue a Notice of Inquiry (NOI), as requested by some IXCs, the Commission decided it is possible to resolve certain methodological and factual issues, to the extent that they are relevant to our ratesetting task, in the course of determining what, if any, modifications the Commission should make to the dial-around compensation rate.

5. The Commission invites comments both on the general issue of whether to prescribe a different payphone compensation rate and on the specific issue of the amount of the rate. The Commission seeks comment on the cost studies presented in the petitions for rulemaking by APCC and the RBOC Payphone Coalition (Coalition). The Commission seeks comment on whether the methodologies reflected in those studies are consistent with the rate methodology the Commission used in *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Third Report and Order*, 64 FR 13701, March 22, 1999. The Commission also asks whether the cost information

presented in those studies accurately represents the costs currently incurred by payphone service providers. The Commission further invites commenting parties to submit additional studies that support or refute the information presented in the APCC and Coalition studies.

6. In the NPRM, the Commission tentatively concludes that the methodology the Commission adopted in the *Third Report and Order* is the appropriate methodology to use in reevaluating the default dial-around compensation rate. The decision to use that methodology was affirmed by the United States Court of Appeals for the D.C. Circuit. The Commission seeks comment on this tentative conclusion.

7. The Commission also invites comment on whether the methodology should be modified in any way due to changes in the payphone industry since its adoption. For example, some IXCs argue that, due to the elasticity of the demand for dial-around calling, an increase in the dial-around rate would suppress demand to such an extent as to reduce total revenues, resulting in increased removal of payphones. APCC and the Regional Bell Operating Companies (RBOCs), on the other hand, argue that there is no reason to believe that dial-around calling is highly price-elastic. In the *Third Report and Order*, the Commission considered the issue of demand elasticity in determining the appropriate allocation of overhead between dial-around calls and other calls, but was unable to reach a firm conclusion. Thus, elasticity issues bear on both the allocation of overhead and the potential for demand suppression. The Commission seeks further comment on the issue of demand elasticity, including the impact of recent increases in the coin calling rate and the cross-elasticity of demand between payphones and wireless telephone service. The Commission invites the submission of any further data that may have become available on these questions. Also, because monthly call volume is a key driver in determining the per-call compensation rate, the Commission seeks comment on the efficacy and merit of the use in the APCC and Coalition cost studies of marginal payphone monthly call volumes of 233.9 and 219, respectively.

8. The Commission seeks comment on whether the particular inputs the Commission adopted in the *Third Report and Order* for various cost categories continue to be appropriate or whether there are changed conditions that warrant modifications of the particular inputs used in 1999. For example, is the depreciation rate used in

the *Third Report and Order* still valid? As another example, WorldCom claims that, given the declining payphone base, estimates of capital costs should be based on the price of second-hand payphones. The Commission invites comment on this and other aspects of the cost studies.

9. The Commission seeks comment on whether additional cost categories are needed beyond those identified in the *Third Report and Order*. Are there other cost categories that should be added or modified beyond those on which the Commission relied in the *Third Report and Order*? Specifically, the APCC and Coalition cost studies add an element for collection costs specific to dial-around compensation, and the Coalition study adds an element for uncollectibles. In the *Third Report and Order*, the Commission declined to include these costs in setting the dial-around rate, finding that the record in that docketed proceeding contained insufficient information to determine the extent to which administration costs vary when the number of coinless calls increases relative to coin calls. AT&T and others argue that the *Third Report and Order* methodology precludes the inclusion of an element for bad debt. The Commission invites comment on whether there is now an adequate record to justify such an element, and the appropriate amount of such an element.

10. The Commission seeks comment on whether and how the Commission should consider the revenues and costs associated with the provision of additional services and activities in conjunction with payphones, such as Internet access or rental of advertising space. Are these revenues and costs relevant to the Commission's marginal payphone analysis, and, if so, how? While APCC argues that such contribution is minimal, is there evidence regarding the extent of the net contribution to payphone cost recovery resulting from these activities? Is there any net contribution? If so, the Commission invites parties to supply such evidence with respect to payphones generally and to marginal payphones in particular.

11. Sprint urges the Commission to reconsider adopting a "caller-pays" compensation scheme, in which the caller would deposit coins or other forms of advance payment before making a dial-around call. In the *Third Report and Order*, the Commission noted that some economists would argue that a caller-pays methodology forms the basis for the purest market-based approach. The Commission rejected this approach based on

evidence that Congress disapproved of a caller-pays methodology. For this reason, the Commission tentatively concluded in this NPRM that it should not adopt a "caller-pays" methodology. The Commission seeks comment on this tentative conclusion.

12. Nevertheless, the Commission seeks comment on whether circumstances have changed such that it is now appropriate to reconsider a caller-pays approach to payphone compensation. In fact, in the *Third Report and Order*, the Commission concluded that it should monitor the advance of call blocking technology and other marketplace developments before reconsidering a caller-pays approach. As noted in the NPRM, consumers using dial-around services from payphones may be billed by their interexchange carriers at rates higher than both the default compensation rate and the local coin call rate. Thus the convenience of coinless calling may come at a high price to the consumer. The Commission asks parties to provide information about what service providers charge customers for dial-around and other coinless payphone services. More generally, the Commission seeks comment on how it should analyze the costs and benefits of the Commission policy of prescribing a dial-around compensation rate to be paid by service providers to payphone operators in lieu of a caller-pays system. Finally, the Commission seeks comment on Commission authority to allow advance consumer payment for use of payphones. In particular, does 47 U.S.C. 226(e) permit the Commission to conclude that the Commission need not prescribe compensation apart from advance payment by the consumer? Is so, what factual findings or policy goals would support such a conclusion?

Initial Paperwork Reduction Act Analysis

13. This NPRM contains either proposed or modified information collections. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments must be identified as responses to the Initial Paperwork Reduction Act Analysis. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should

address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Initial Regulatory Flexibility Act Analysis

14. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rule(s) proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA.

15. This present IRFA conforms to the RFA, as amended. *See* 5 U.S.C. 604. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

Need for, and Objectives of, the Proposed Rules

16. In adopting section 276 in 1996, Public Law No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. 276), Congress mandated *inter alia* that the Commission "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone * * *." In this NPRM, the Commission decided to reexamine the default payphone compensation rate the Commission prescribed in 1999. The overall objective of this proceeding is to evaluate whether changes are necessary to the current default rate of compensation for dial-around calls originating at payphones, in order to ensure that payphone service providers are fairly compensated, promote payphone competition, and promote the widespread deployment of payphone services. The NPRM seeks comment on

specific issues related solely to the level of dial-around compensation.

Legal Basis

17. The proposed action is supported by 47 U.S.C. 151, 152, 154(i)-(j), 201, 226 and 276, as well as 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1216.

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

18. The RFA directs agencies to provide a description of, and an estimate of, the number of small entities that may be affected by the rule(s) proposed herein, where feasible. 5 U.S.C. 604(a)(3). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are more appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632). Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**."

19. *Small Incumbent Local Exchange Carriers*. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance

is not "national" in scope.¹ The Commission therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

20. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 717110. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. 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 of 2000). 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. *Id.* The Commission notes that 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." Under the size standard of 1,500 or fewer employees, the great majority of Wired Telecommunications Carriers can be considered small.

21. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110. According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* (May 2002) (hereinafter *Telephone Trends Report*),

Table 5.3. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of local exchange service are small businesses that may be affected by the rule(s) and policies proposed herein.

22. *Competitive Local Exchange Carriers (CLECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive local exchange services or to competitive access providers (CAPs) or to "Other Local Exchange Carriers," all of which are discrete categories under which Telecommunications Relay Service (TRS) data are collected. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *Telephone Trends Report*, Table 5.3. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. *Id.* In addition, 55 carriers reported that they were "Other Local Exchange Carriers." *Id.* Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rule(s) and policies proposed herein.

23. *Local Resellers*. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517310. According to the Commission data, 134 companies reported that they were engaged in the provision of local resale services. *Telephone Trends Report*, Table 5.3. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of local resellers are small entities that may be affected by the rules and policies proposed herein.

24. *Toll Resellers*. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517310. According to the Commission's most recent *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. *Telephone Trends Report*, Table 5.3. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of toll resellers are small entities that may be affected by the rules and policies proposed herein.

25. *Payphone Service Providers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers (PSPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to the Commission's most recent *Telephone Trends Report* data, 936 PSPs reported that they were engaged in the provision of payphone services. *Telephone Trends Report*, Table 5.3. Of these 936 PSPs, an estimated 933 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of PSPs are small entities that may be affected by the rules and policies proposed herein.

26. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. *Telephone Trends Report*, Table 5.3. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by the rules and policies proposed herein.

¹ Letter from Jere W. Glover, Chief Counsel of 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. 601 (3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102 (b).

27. Operator Service Providers.

Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 22 companies reported that they were engaged in the provision of operator services. *Telephone Trends Report*, Table 5.3. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of operator service providers are small entities that may be affected by the rules and policies proposed herein.

28. *Wired Telecommunication Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers including prepaid calling card providers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517310. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. *Telephone Trends Report*, Table 5.3. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies proposed herein.

29. *Satellite Service Carriers.* The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such firms having \$12.5 million or less in annual receipts. (13 CFR 121.201, NAICS code 51741). According to Census Bureau data for 1997, in this category there was a total of 324 firms that operated for the entire year (U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size {Including Legal Form of Organization}," Table 4, NAICS code 513340). 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. *Id.* Thus, under this size standard, the majority of firms can be considered small.

30. *Other Toll Carriers.* Neither the Commission nor the SBA has developed

a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 42 companies reported that their primary telecommunications service activity was the provision of "Other Toll" services. *Telephone Trends Report*, Table 5.3. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies proposed herein.

31. *Paging.* The SBA has developed a small business size standard for paging firms. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517211, and 13 CFR 121.201, NAICS code 517212, respectively.

32. *Cellular and other Wireless Telecommunications.* For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513321 (issued October of 2000). Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. *Id.* Thus, under this category and associated small business size standard, the great majority of or the census category of Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small. Consequently, the Commission estimates that most

wireless service providers are small entities that may be affected by the rule(s) and policies proposed herein.

33. *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. *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). 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. *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. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. *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. 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. FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997); *see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97–82, *Second Report and Order*, 62 FR 55348, October 24, 1997. On March 23, 1999, the Commission reauctioned 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.

34. 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 licensees will include 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 are small entities that may be affected by the rules and policies proposed herein.

35. 800 MHz and 900 MHz

Specialized Mobile Radio Licensees. 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 three previous calendar years, respectively. 47 CFR 90.814. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been approved by the SBA. 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 its 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 and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies proposed herein.

36. *Rural Radiotelephone Service.* The Commission has not adopted a size

standard for small businesses specific to the Rural Radiotelephone Service. The service is defined in 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). BETRS is defined in 47 CFR 22.757, 22.759. For purposes of this IRFA, the Commission uses the SBA's size standard applicable to Cellular and Other Wireless Telecommunications—an entity employing no more than 1,500 persons. 13 CFR 121.201, NAICS code 517212. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, 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 proposed herein.

37. Fixed Microwave Services.

Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. For common carrier fixed microwave services (except Multipoint Distribution Service), see 47 CFR part 101 (formerly 47 CFR part 21). Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80, 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations. Auxiliary Microwave Service is governed by 47 CFR part 74. The Auxiliary Microwave Service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as, a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

38. For purposes of this IRFA, the Commission uses the SBA's size standard for the category Cellular and Other Telecommunications, which is 1,500 or fewer employees. 13 CFR 121.201, NAICS code d to 517212. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business

specifically with respect to microwave services. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed microwave licensees and 61,670 or fewer small private operational-fixed microwave licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies proposed herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

39. *39 GHz Licensees.* The Commission has created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. See *Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95–183, *Report and Order*, 63 FR 6079, February 6, 1998. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. *Id.* The SBA has approved these size standards. See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998). The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies proposed herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

40. The Commission does not intend that any proposal it may adopt pursuant to this NPRM will increase existing reporting, recordkeeping or other compliance requirements.

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

41. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed

approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

42. According to the Petitioners, the existing rate of \$.24 does not provide the statutory requirement of fair compensation. Thus, the Commission is concerned that inadequate compensation may undermine the statutory goals of promoting competition among payphone providers while simultaneously ensuring the widespread deployment of payphones. 47 U.S.C. 276. The Commission is further concerned that inadequate payphone compensation may have adverse economic impacts on smaller entities that provide payphone service. The Commission, therefore, is examining various options, including a proposed rule increasing the default rate, to ensure the provision of fair compensation.

43. The Commission, however, recognizes that an alternative approach to increasing the default rate has been proposed by parties who contend that any increase in the default rate may further suppress demand for payphone services. The Commission also recognizes that in proposing this alternative approach, these parties contend that the fully distributed cost methodology may be ripe for reexamination.

44. Another proposed rule under consideration may entail an examination of the revenues generated by non-traditional payphone services such as the provision of internet access. In the alternative, services other than access to the internet, such as data transfer and interactive functionalities may be taken into consideration. Accordingly, the Commission will consider assessments of both the impact of internet access and other new technology services.

45. Finally, the Commission requests comment on any small business related concerns occasioned by proposed rules addressing the reexamination of the default rate, the use of non-traditional payphone services, and other alternatives that may impact small businesses.

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

46. None.

Ex Parte Presentations

47. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200 *et seq.* Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

Comment Filing Procedures

48. In order to facilitate review of comments and reply comments, parties must include the name of the filing party and the date of the filing on all comments and reply comments. Comments and reply comments must clearly identify the specific portion of the NPRM to which a particular comment or set of comments is responsive.

49. Comments may be filed by using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 2421 (May 1, 1998). Comments filed through the ECFS may 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 must include their full name, 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 must 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.

50. Comments may be filed by filing paper copies. Parties who choose to file by paper must file an original and five copies of each filing. Two copies of each filing must also be sent to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

51. 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 discarded 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, Capital Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be sent to 445 Twelfth Street SW., Washington, DC 20554. The Commission advises that electronic media not be sent through the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Ordering Clauses

52. Accordingly, the Petitions for Rulemaking filed by APCC and the RBOC Payphone Coalition *are granted* as set forth herein.

53. Pursuant to the authority contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226, 276 and 405, this Notice of Proposed Rulemaking *is adopted*.

54. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this 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 64

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rules Changes

The Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B),(C), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201,

218, 225, 226, 228, and 254 (k) unless otherwise noted.

2. Revise § 64.1300 (c) to read as follows:

§ 64.1300 Payphone compensation obligation.

* * * * *

(c) In the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of \$0. __.

[FR Doc. 03-30309 Filed 12-5-03; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-03-16601]

RIN 2127-AJ12

Federal Motor Vehicle Safety Standards; Low Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal addresses two petitions for rulemaking regarding the exclusion of trucks from the definition of "low-speed vehicle" (LSV). The proposed definition would expand the LSV class to include trucks, but would limit the class to small vehicles. In addition, the proposed definition is more complete than the current definition.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than February 6, 2004.

ADDRESSES: You may submit comments [identified by the DOT DMS Docket Number] by any of the following methods:

- Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Requests for Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the discussion of the Privacy Act under the Comments heading.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Gayle Dalrymple, Office of Crash Avoidance Standards, NVS-123, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone 202-366-5559, facsimile 202-493-2739, e-mail gayle.dalrymple@nhtsa.dot.gov.

For legal issues: Christopher Calamita, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone 202-366-2992, facsimile 202-366-3820.

SUPPLEMENTARY INFORMATION:

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- I. Background
- II. Proposed Change to Definition of Low-speed Vehicle
- III. Proposed Effective Date
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I. Background

On June 17, 1998, the National Highway Traffic Safety Administration (NHTSA) published a final rule establishing a new Federal Motor Vehicle Safety Standard (FMVSS) No. 500, "Low-speed vehicles," and added a definition of "low-speed vehicle" (LSV) to 49 CFR 571.3 (63 FR 33194). This new FMVSS and vehicle classification responded to the growing public interest in using golf cars and other similarly sized small vehicles to make short trips for shopping, social and recreational purposes primarily within retirement or

other planned, self-contained communities. These vehicles, many of which are electric-powered,¹ offer comparatively low-cost, energy-efficient, low-emission, quiet transportation. Electric LSVs are also known as Neighborhood Electric Vehicles (NEVs). The current definition of LSV is "a 4-wheeled motor vehicle, other than a truck,² whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface."

In the preamble to the notice of proposed rulemaking, in the preamble to the final rule, in response to petitions for reconsideration of the final rule, and in letters of interpretation of the definition of LSV, we made it clear that our vision of an LSV is a small, lightweight vehicle that could not meet FMVSSs appropriate for larger and heavier vehicles. (The citations for these documents are provided later in this preamble.) In the NPRM, we proposed the "creation of a new class of vehicle * * * with a definitional criterion of speed alone." Trucks were not excluded; however, low-speed vehicles with "work performing features" (such as a street sweeper) would have been excluded from the equipment requirement of the proposed standard. Not excluding trucks from the LSV definition would have had the unintended result of rendering some vehicles that already met FMVSSs subject to neither those standards nor even the minimum requirements applying to LSVs. In the preamble to the final rule, we noted:

vehicles with "work performing equipment" (i.e., certain trucks) would have been LSVs under the proposal, although not required to meet Standard No. 500. Under the final rule, these vehicles are no longer included and must continue to meet truck FMVSSs. This change is consistent with the rationale of this rulemaking, which is to eliminate a regulatory conflict involving passenger-carrying vehicles. Further, NHTSA concludes that the truck FMVSSs remain appropriate for trucks with a speed capability between 20 and 25 miles per hour and that these standards have not inhibited their introduction in the past. (63 FR 33194, 33197.)

The trucks under discussion in the above paragraph were heavy vehicles, such as street sweepers and other slow-moving special task vehicles. The

¹ Upon review of LSVs currently manufactured, the agency is not aware of an LSV designed with a non-electric power source.

² A "truck" is defined at 49 CFR 571.3(b) as "a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment."