

in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the final rules and regulations section of this **Federal Register**.

Dated: June 20, 2005.

**Julie Hagensen,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 05-12712 Filed 6-28-05; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 9

[WC Docket No. 05-196; FCC 05-116]

#### E911 Requirements for IP-Enabled Service Providers

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission (Commission) proposes to amend its rules that require providers of interconnected VoIP (VoIP) services—meaning VoIP service that allows a user generally to receive calls originating from and to terminate calls to the public switched telephone network (PSTN)—to provide enhanced 911 (E911) capabilities to their customers as a standard feature of service. The Commission initiates this rulemaking to determine what additional steps it should take to ensure that providers of VoIP services that interconnect with the nation's PSTN provide ubiquitous and reliable E911 service. These changes will enhance public safety and ensure E911 access to emergency services for users of interconnected VoIP services.

**DATES:** Comments are due on or before August 15, 2005, and reply comments are due on or before September 12, 2005.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 05-196, by any of the following methods:

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

- **Agency Web Site:** <http://www.fcc.gov>. Follow the instructions for submitting comments on <http://www.fcc.gov/cgb/ecfs/>.

- **E-mail:** [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

- **Mail:** Federal Communications Commission, 445 12th Street, SW., Washington DC 20554.

- **Hand Delivery/Courier:** 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs/>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go <http://www.fcc.gov/cgb/ecfs/>.

#### FOR FURTHER INFORMATION CONTACT:

Christi Shewman, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1686.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 05-196, FCC 05-116, adopted May 19, 2005, and released June 3, 2005. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

#### Public Participation

Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor 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, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C140, 445 12th Street, SW., Washington, DC 20554, or by e-mail to [Janice.myles@fcc.gov](mailto:Janice.myles@fcc.gov). Parties shall also serve one copy with

the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

### Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. In this NPRM, we seek comment on what additional steps the Commission should take to ensure that providers of VoIP services that interconnect with the nation's PSTN provide ubiquitous and reliable E911 service. The Order that accompanies this NPRM is published elsewhere in this issue of the **Federal Register**. This Order is the Commission's first step to ensure that the life-saving benefits of E911 service that wireline telephone and wireless telephone users have come to rely on also are extended to citizens who choose to communicate using interconnected VoIP services. Due to the existing state of technology, today's Order relies in some cases on users to provide the location information that will be delivered to public safety answering points (PSAPs) in an emergency, and thus is an immediate step toward a more advanced solution in which the user automatically can be located without assistance from the user. We seek comment on what the Commission can do to further the development of this new technology, and on issues raised by today's Order, including whether the Commission should expand the scope and requirements of this Order. Commenters should take note of the Commission's view that while a provider of VoIP service enjoys the opportunity to introduce new and exciting public interest benefits to the communications marketplace, and to profit from those offerings, that opportunity brings with it the responsibility to ensure that public safety is protected.

2. As the Commission previously has discussed, one of the central customer benefits of portable interconnected VoIP services is the lack of geographic restrictions. However, because portable interconnected VoIP services may be offered independent of geography, currently there is no way for portable VoIP providers reliably and automatically to provide location information to PSAPs for these services without the customer's active cooperation. What can the Commission do to facilitate the development of techniques for automatically identifying the geographic location of users of this type of VoIP service? What role should the Commission play to further the evolution of E911 service and E911 systems that do not depend on a

customer providing his or her location information? A number of possible methods have been proposed to automatically identify the location of a VoIP user, including gathering location information through the use of: an access jack inventory; a wireless access point inventory; access point mapping and triangulation; HDTV signal triangulation; and various GPS-based solutions. What role would be most productive for the Commission to play in facilitating the adoption of one or more of these possible solutions, or facilitating some other solution, to automatically identify a VoIP service customer's location? Are any of these solutions more promising than others? Are there any reasons why certain of these solutions are unworkable? What other solutions could be used to provide location information automatically in the VoIP service context? Should the Commission require all terminal adapters or other equipment used in the provision of interconnected VoIP service sold as of June 1, 2006 to be capable of providing location information automatically, whether embedded in other equipment or sold to customers as a separate device? Under what authority could the Commission take such actions?

3. We also seek comment on issues raised by our decision today to impose E911 service obligations on providers of interconnected VoIP services. The scope of today's Order is limited to providers of interconnected VoIP services. We seek comment on whether the Commission should extend these obligations, or similar obligations, to providers of other VoIP services that are not covered by the rules adopted today. For instance, what E911 obligations, if any, should apply to VoIP services that are not fully interconnected to the PSTN? Specifically, should E911 obligations apply to VoIP services that enable users to terminate calls to the PSTN but do not permit users to receive calls that originate on the PSTN? Should E911 obligations apply to the converse situation in which a VoIP service enables users to receive calls from the PSTN but does not permit the user to make calls terminating to the PSTN? We tentatively conclude that a provider of a VoIP service offering that permits users generally to receive calls that originate on the PSTN and separately makes available a different offering that permits users generally to terminate calls to the PSTN should be subject to the rules we adopt in today's Order if a user can combine those separate offerings or can use them simultaneously or in immediate

succession. Are there any other services upon which the Commission should impose E911 obligations, including any IP-based voice services that do not require a broadband connection?

4. Does the Commission need to adopt regulations in addition to those imposed by today's Order to ensure that interconnected VoIP service customers obtain the required level of E911 services? It is our expectation that end-user updates of Registered Location information will take place immediately. If this is not feasible, what performance standards should the Commission adopt regarding the length of time between when an end user updates Registered Location information and when the service provider takes the actions necessary to enable E911 from that new location? How should such requirements be structured? How should providers of interconnected VoIP service satisfy the requirements we adopt today in cases in which a subscriber's Registered Location is not associated with a street address? What requirements, if any, should we impose on providers of interconnected VoIP service in geographic areas served by PSAPs that are not connected to a Selective Router? How should the use of wireless broadband connections such as Wi-Fi or WiMax impact the applicability of the obligations we adopt today? Would providers of wireless interconnected VoIP service be more appropriately subject to our existing 911/E911 rules for commercial mobile radio service? Should the Commission require VoIP service providers to create redundant systems for providing E911 services, such as requiring redundant trunks to each Selective Router and/or requiring that multiple Selective Routers be able to route calls to each PSAP? We also seek comment on whether the Commission should impose additional or more restrictive customer notification requirements relating to E911 on VoIP providers, and on the sufficiency of our customer acknowledgement requirements.

5. Should the Commission impose reporting obligations on VoIP service providers other than the compliance letter we impose in today's Order? Are there other ways for the Commission to monitor implementation of its E911 rules without imposing reporting requirements? We note that the Commission has imposed progress reporting requirements in the past for implementation and enforcement of 911/E911 transition deadlines for wireless and wireline providers. Should the Commission require interconnected VoIP providers to report what progress they are making in developing ways to

locate automatically a user who dials 911? Should the Commission require reporting of any other information by interconnected VoIP providers? If the Commission adopts additional reporting requirements, what are the appropriate deadlines for such progress reports? Under what authority could the Commission take such actions?

6. We seek comment on what role states can and should play to help implement the E911 rules we adopt today. We recognize the historic and important role of states and localities in public safety matters. State and local governments have filled an especially important role in creating and regulating 911/E911 operations—a role states have shouldered even in the context of wireless services. Should state and local governments play a role similar to the roles they play in implementing the Commission's wireless 911/E911 rules? Should the Commission take any action to facilitate the states' ability to collect 911 fees from interconnected VoIP providers, either directly or indirectly? How can the Commission and the states work together to ensure the public's safety?

7. Should the Commission adopt any customer privacy protections related to provision of E911 service by interconnected VoIP service providers? The E911 rules we adopt today when fully implemented will require interconnected VoIP service providers to transmit a customer's Registered Location to an appropriate PSAP, which necessarily requires providers of such services to maintain a list of their customers' Registered Location, and makes that information available to public safety professionals and others when the customer dials 911. Wireline and wireless telecommunications carriers are already subject to privacy requirements. Should the Commission adopt similar privacy protections in the context of interconnected VoIP service? Under what authority could we adopt such rules?

8. Finally, we seek comment on whether persons with disabilities can use interconnected VoIP service and other VoIP services to directly call a PSAP via a TTY in light of the requirement in Title II of the Americans with Disabilities Act (ADA) that PSAPs be directly accessible by TTYs. Furthermore, the Commission in 1999 released a Notice of Inquiry (64 FR 63277, November 19, 1999) raising specific questions regarding the application of the disability accessibility provisions found in sections 251(a)(2) and 255 of the Communications Act, as amended (Act), in the context of "IP telephony" and "computer-based

equipment that replicates telecommunications functionality." That Notice of Inquiry sought comment on the extent to which Internet telephony was impairing access to communications services among people with disabilities, the efforts that manufacturers were taking to render new technologies accessible, and the degree to which these technologies should be subjected to the same disability access requirements as traditional telephony facilities. We ask commenters to refresh the record in that proceeding in light of today's Order by filing comments in this docket. Are there any steps that the Commission needs to take to ensure that people with disabilities who desire to use interconnected VoIP service obtain access to E911 services? What is the basis of the Commission's authority to impose any obligations that commenters feel are warranted?

#### **Initial Paperwork Reduction Act of 1995 Analysis**

9. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

#### **Initial Regulatory Flexibility Analysis**

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

##### *1. Need for, and Objectives of, the Proposed Rules*

11. In the NPRM, we seek comment on what additional steps the Commission should take to ensure that providers of VoIP services that interconnect with the nation's existing public switched telephone network—"interconnected VoIP service"—provide ubiquitous and reliable E911 service.

Due to the existing state of technology, the Order relies on users to provide the location information that will be delivered to PSAPs in an emergency, and thus is an immediate step toward a more advanced solution in which the user automatically can be located without assistance from the user. The NPRM seeks comment on: What the Commission can do to further the development of this new technology; whether the Commission should expand the scope and requirements of this Order; the role states can and should play in the implementation thereof; the need for consumer privacy protections; the need for stronger customer notification practices relating to 911 service; and whether persons with disabilities can use interconnected VoIP service and other VoIP services to directly call a PSAP via a TTY in light of the requirement in Title II of the Americans with Disabilities Act (ADA) that PSAPs be directly accessible by TTYs. The NPRM further asks commenters to refresh the record regarding the application of the disability accessibility provisions found in sections 251(a)(2) and 255 of the Act in the context of "IP telephony" and "computer-based equipment that replicates telecommunications functionality."

##### *2. Legal Basis*

12. The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1, 4(i), 4(j), 251(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 251(e), 303(r), and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216, of the Commission's rules, 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, 1.1200-1.1216.

##### *3. Description and Estimate of the Number of Small Entities to Which Rules May Apply*

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

14. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

15. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

16. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

a. Telecommunications Service Entities

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

18. *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. The Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

19. *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. 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.

20. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The Commission estimates that the majority of local resellers are small entities that may be affected by our action.

21. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

22. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

23. *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. The Commission estimates that the majority of IXCs are small entities that may be affected by our action.

24. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such

a business is small if it has 1,500 or fewer employees. The Commission estimates that the majority of OSPs are small entities that may be affected by our action.

25. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

26. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. We estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

27. *International Service Providers.* The Commission has not developed a small business size standard specifically for providers of international service. 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 million or less in average annual receipts. The majority of Satellite Telecommunications firms can be considered small.

28. The second category—Other Telecommunications—includes "establishments primarily engaged in \* \* \* providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." Under this second size standard, the majority of firms can be considered small.

29. *Wireless Telecommunications Service Providers.* Below, for those services subject to auctions, 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.

30. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. Under both categories and associated small business size standards, the majority of firms can be considered small.

31. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. Under this category and size standard, the great majority of firms can be considered small. We have estimated that 245 of the entities engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services are small under the SBA small business size standard.

32. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category, "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. Under this category and associated small business size standard, the majority of firms can be considered small. In the *Paging Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 346

carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 341 are small, under the SBA-approved small business size standard.

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

34. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. We have estimated that 245 of the carriers who reported to us that they were engaged in the provision of wireless telephony are small under the SBA small business size standard.

35. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as "an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the

Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

36. *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*. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (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. 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.

37. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. Under this second category and size standard, the majority of firms can be considered small. Assuming this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

38. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG

licenses. Fourteen companies claiming small business status won 158 licenses.

39. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

40. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz

Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

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

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

43. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and

December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

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

45. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that

would qualify as small under the SBA’s small business size standard for “Cellular and Other Wireless Telecommunications” services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

46. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for “very small business” is: An entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

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

business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

48. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. We conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

49. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. We cannot estimate, however, the number of licenses that will be won by

entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

50. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons. Under this size standard, the great majority of firms can be considered small.

51. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

#### b. Cable and OVS Operators

52. *Cable and Other Program Distribution.* 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. The SBA has developed small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually. The Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

53. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission’s rules, a “small cable company” is one serving fewer than 400,000 subscribers nationwide. The Commission estimates that there currently are fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

54. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator

that, directly or through an affiliate, serves in the aggregate fewer than 1 percent 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.” The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

55. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission concludes that up to 24 OVS operators might qualify as small businesses that may be affected by the rules and policies adopted herein.

#### c. Internet Service Providers

56. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as Web hosting, Web page designing, and hardware or software consulting related to Internet connectivity.” Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. We estimate that the majority of these firms are small entities that may be affected by our action.

#### d. Other Internet-Related Entities

57. *Web Search Portals.* Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, Web browsing, video conferencing, instant messaging, and

other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the census bureau has identified firms that “operate Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users.” The SBA has developed a small business size standard for this category; that size standard is \$6 million or less in average annual receipts. We estimate that the majority of these firms are small entities that may be affected by our action.

58. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily \* \* \* provid[e] infrastructure for hosting or data processing services.” The SBA has developed a small business size standard for this category; that size standard is \$21 million or less in average annual receipts. We estimate that the majority of these firms are small entities that may be affected by our action.

59. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).” Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6 million or less in average annual receipts. We estimate that the majority of these firms are small entities that may be affected by our action.

60. *Internet Publishing and Broadcasting.* “This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.” The SBA has developed a small business size standard for this new (2002) census category; that size standard is 500 or fewer employees. To assess the prevalence of small entities in this category, we will use 1997 Census Bureau data for a relevant, now-superseded census category, “All Other Information Services.” The SBA small



business size standard for that prior category was \$6 million or less in average annual receipts. We estimate that the majority of the firms in this current category are small entities that may be affected by our action.

61. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of \$21 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. We estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

62. *Equipment Manufacturers.* The equipment manufacturers described in this section are merely indirectly affected by our current action, and therefore are not formally a part of this IRFA analysis. We have included them, however, to broaden the record in this proceeding and to alert them to our decisions.

63. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Examples of products in this category include "transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment" and may include other devices that transmit and receive IP-enabled services, such as personal digital assistants (PDAs). Under the SBA size standard, firms are considered small if they have 750 or fewer employees. We estimate that the majority of wireless communications equipment manufacturers are small entities that may be affected by our action.

64. *Telephone Apparatus Manufacturing.* This category "comprises establishments primarily engaged primarily in manufacturing wire telephone and data communications equipment." Examples of pertinent products are "central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, and data communications equipment, such as

bridges, routers, and gateways." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. We estimate that the majority of these establishments are small entities that may be affected by our action.

65. *Electronic Computer Manufacturing.* This category "comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. We estimate that the majority of these establishments are small entities that may be affected by our action.

66. *Computer Terminal Manufacturing.* "Computer terminals are input/output devices that connect with a central computer for processing." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. We estimate that the majority or all of these establishments are small entities that may be affected by our action.

67. *Other Computer Peripheral Equipment Manufacturing.* Examples of peripheral equipment in this category include keyboards, mouse devices, monitors, and scanners. The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. We estimate that the majority of these establishments are small entities that may be affected by our action.

68. *Fiber Optic Cable Manufacturing.* These establishments manufacture "insulated fiber-optic cable from purchased fiber-optic strand." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. We estimate that the majority of these establishments are small entities that may be affected by our action.

69. *Other Communication and Energy Wire Manufacturing.* These establishments manufacture "insulated wire and cable of nonferrous metals from purchased wire." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. We estimate that the majority or all of these establishments are small entities that may be affected by our action.

70. *Audio and Video Equipment Manufacturing.* These establishments manufacture "electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. We estimate that the majority of these establishments are small entities that may be affected by our action.

71. *Electron Tube Manufacturing.* These establishments are "primarily engaged in manufacturing electron tubes and parts (except glass blanks)." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. We estimate that the majority of these establishments are small entities that may be affected by our action.

72. *Bare Printed Circuit Board Manufacturing.* These establishments are "primarily engaged in manufacturing bare (*i.e.*, rigid or flexible) printed circuit boards without mounted electronic components." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. We estimate that the majority of these establishments are small entities that may be affected by our action.

73. *Semiconductor and Related Device Manufacturing.* These establishments manufacture "computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 987 establishments in this category that had employment of under 500.

74. *Electronic Capacitor Manufacturing.* These establishments manufacture "electronic fixed and variable capacitors and condensers." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 128 establishments in this category that operated for the entire year. Of these, 121 had employment of under 500, and four establishments had employment of 500 to 999.

75. *Electronic Resistor Manufacturing.* These establishments manufacture "electronic resistors, such as fixed and

variable resistors, resistor networks, thermistors, and varistors." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 118 establishments in this category that operated for the entire year. Of these, 113 had employment of under 500, and 5 establishments had employment of 500 to 999.

76. *Electronic Coil, Transformer, and Other Inductor Manufacturing.* These establishments manufacture "electronic inductors, such as coils and transformers." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 448 establishments in this category that operated for the entire year. Of these, 446 had employment of under 500, and two establishments had employment of 500 to 999.

77. *Electronic Connector Manufacturing.* These establishments manufacture "electronic connectors, such as coaxial, cylindrical, rack and panel, pin and sleeve, printed circuit and fiber optic." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 347 establishments in this category that operated for the entire year. Of these, 332 had employment of under 500, and 12 establishments had employment of 500 to 999.

78. *Printed Circuit Assembly (Electronic Assembly) Manufacturing.* These are establishments "primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 714 establishments in this category that operated for the entire year. Of these, 673 had employment of under 500, and 24 establishments had employment of 500 to 999.

79. *Other Electronic Component Manufacturing.* These are establishments "primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were

1,835 establishments in this category that operated for the entire year. Of these, 1,814 had employment of under 500, and 18 establishments had employment of 500 to 999.

80. *Computer Storage Device Manufacturing.* These establishments manufacture "computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 209 establishments in this category that operated for the entire year. Of these, 197 had employment of under 500, and eight establishments had employment of 500 to 999.

#### 4. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

81. The NPRM describes a future requirement the Commission intends to adopt for an advanced E911 solution for interconnected VoIP that must include a method for determining a user's location without assistance from the user and that there will be firm implementation deadlines for that solution. The NPRM also seeks comment on what additional steps the Commission should take to ensure that providers of VoIP services provide ubiquitous and reliable E911 service in light of the technological barriers that apply to VoIP E911 services. For instance, the Commission seeks comment on how it can facilitate the development of techniques for automatically identifying the geographic location of users of VoIP services, and notes that a number of possible methods have been proposed to automatically identify the location of a VoIP user, including gathering location information through the use of: An access jack inventory; a wireless access point inventory; access point mapping and triangulation; HDTV signal triangulation; and various GPS-based solutions. The Commission specifically asks whether it should require all terminal adapters or other equipment used in the provision of interconnected VoIP service sold as of June 1, 2006 to be capable of providing location information automatically, whether embedded in other equipment or sold to customers as a separate device. The NPRM also seeks comment on whether the Commission should expand the scope of its rules, which are limited to providers of interconnected VoIP services. The Commission tentatively concludes that a provider of a VoIP service offering that permits users to

receive calls that originate on the PSTN and separately makes available a different offering that permits users to terminate calls generally to the PSTN should be subject to the rules if a user can combine those separate offerings or can use them simultaneously or in immediate succession.

82. The Commission also seeks comment on whether it should adopt additional regulations to ensure that interconnected VoIP service customers obtain the required level of E911 services. Among other things, the Commission asks whether it should adopt E911 performance standards, require system redundancy, and require additional reporting requirements. The NPRM also seeks comment on whether the Commission should impose additional or more restrictive customer notification requirements relating to E911 on VoIP providers, and on the sufficiency of our customer acknowledgement requirements. It also asks whether the Commission should adopt any customer privacy protections related to provision of E911 service by interconnected VoIP service providers, perhaps similar to the privacy requirements that apply to wireline and wireless telecommunications carriers. In addition, the NPRM seeks comment on whether there are any steps the Commission should take to ensure that people with disabilities who desire to use VoIP services obtain access to E911 services, such as by imposing on VoIP technologies the same disability access requirements as traditional telephony facilities.

83. Finally, the Commission also asks what role states can and should play to help implement the E911 rules. For instance, the Commission asks whether state and local governments should play a role similar to the roles they play in implementing the Commission's wireless E911 rules. The NPRM also requests comment on whether the Commission should take any action to facilitate the states' ability to collect 911 fees from interconnected VoIP providers, either directly or indirectly.

#### 5. *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

84. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of

compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

85. The NPRM specifically seeks comment on whether the Commission should expand the scope and requirements of the rules, recognizing that such an expansion may not be appropriate with regard to all VoIP service providers. With one exception, the NPRM does not adopt any tentative conclusions regarding what specific regulations would apply to any entity, including small entities. We hereby specifically seek comment on the effect the various proposals described in the NPRM, and summarized above, will have on small entities, and on what effect alternative rules would have on those entities. How can the Commission achieve its goal of ensuring that all users of VoIP services ultimately covered by the Commission's E911 rules are able to access ubiquitous and reliable E911 service while also imposing the least necessary burdens on small entities? What specific steps could the Commission take in this regard?

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

86. None.

**Ordering Clauses**

87. *It is ordered* that pursuant to the authority contained in sections 1, 4(i), 4(j), 251(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 251(e), 303(r), the Notice of Proposed Rulemaking in WC Docket No. 05-196 is adopted.

88. *It is further ordered* that 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.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 05-12827 Filed 6-28-05; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

[CG Docket No. 02-278; DA 05-1346]

**Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; petition for declaratory ruling, comments requested.

**SUMMARY:** In this document, the Commission seeks comment on a petition for declaratory ruling filed by a coalition of 33 organizations, including trade associations, individual companies, and non-profit entities engaged in interstate telemarketing activities ("Joint Petitioners"), raising issues concerning the scope of the Commission's jurisdiction over interstate telemarketing calls under the Telephone Consumer Protection Act ("TCPA"). In particular, *Joint Petitioners* ask the Commission to issue a ruling declaring the Commission's exclusive regulatory jurisdiction over interstate telemarketing calls and barring state regulation of such calls.

**DATES:** Comments are due on or before July 29, 2005, and reply comments are due on or before August 18, 2005.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Kelli Farmer, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418-2512 (voice), *Kelli.Farmer@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, DA 05-1346, released May 13, 2005. On July 3, 2003, the Commission released a *Report and Order (2003 TCPA Order)* revising its rules under the TCPA, published at 68 FR 44144, July 25, 2003. In the *2003 TCPA Order*, the Commission determined that it would consider any alleged conflicts between state and federal requirements and the need for preemption on a case-by-case basis. Accordingly, the Commission instructed any party that believes a state law is inconsistent with section 227 of the Communications Act or the Commission's rules to seek a declaratory ruling from the Commission. This petition argues that the Commission has exclusive jurisdiction over interstate telemarketing rules and need not deal

with preemption petitions on a case-by-case basis. When filing comments on the joint petition, please reference CG Docket No. 02-278, DA 05-1346. 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 e-mail to [ecfs@fcc.gov](mailto: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 send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues 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 or electronic media 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 and electronic media sent by 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. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-B204, Washington, DC 20554.

This proceeding shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing