

on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA 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 Rules Section of this **Federal Register**.

Dated: August 20, 2007.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*  
[FR Doc. E7-17002 Filed 8-29-07; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 20

[WT Docket No. 05-265, FCC No. 07-143]

#### Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this Further Notice of Proposed Rulemaking (FNPRM), the Federal Communications Commission (FCC) seeks comment on whether it should extend the automatic roaming obligation of commercial mobile radio service (CMRS) carriers to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services. The FCC further seeks comment on the implications of extending the automatic roaming obligation in this manner.

**DATES:** Comments due on or before October 29, 2007 and reply comments are due on or before November 28, 2007.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 05-265, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *E-mail:* Include the docket number in the subject line of the message.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov)

or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Christina Clearwater at (202) 418-1893, [Christina.Clearwater@fcc.gov](mailto:Christina.Clearwater@fcc.gov), Spectrum and Competition Policy Division, Wireless Telecommunications Bureau; Won Kim at (202) 418-1368, [Won.Kim@fcc.gov](mailto:Won.Kim@fcc.gov), Spectrum and Competition Policy Division, Wireless Telecommunications Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), WT Docket No. 05-265, FCC No. 07-143, adopted August 7, 2007 and released August 16, 2007. The full text of the FNPRM is available for public inspection on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

#### Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain an information collection subject to the Paperwork Reduction Act of 1995, and therefore does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002.

#### Synopsis

1. In the FNPRM, the FCC seeks comment on whether it should extend the automatic roaming obligation of CMRS carriers to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-interconnected non-CMRS services offered by CMRS carriers, and on the legal and policy basis for doing so. The FCC further seeks comment on the implications of extending the automatic roaming obligation in this manner.

2. To what extent, if any, would requiring roaming access to non-interconnected services and features

undermine carriers' incentive to innovate or invest in mobile wireless broadband network facilities? Would the potential for undermining innovation be mitigated by conditioning roaming access to non-interconnected services and features, as the Commission has, for example, with push-to-talk and SMS? Namely, should the Commission require that the requesting carrier must offer the requested service or feature to its subscribers on its own home network; that roaming must be technically feasible; and any changes to the would-be host carrier's network that are necessary to accommodate roaming requests extending to these services and features must be economically reasonable?

3. If the Commission were to extend automatic roaming obligations to non-interconnected services and features, are there any special issues (technical, economic, or otherwise) associated with roaming data networks that may not exist when roaming among CMRS carriers' interconnected voice networks? For example, are there any issues regarding network capacity, network integrity, or network security? The Commission seeks comment on the effect that automatic roaming would have on the capacity of data networks and the ability of carriers to offer full access to their own customers. The Commission would be concerned if requiring a carrier to offer roaming service on its data network to the customers of other carriers resulted in the carrier facing capacity constraints that adversely affect its own customers. The Commission therefore asks whether a carrier should have the right to limit access to its network by roamers, and what parameters should be considered as justification for such limits. The Commission invites commenters to suggest specific standards for determining when the requirement should or should not apply.

4. If the Commission were to extend automatic roaming obligations to non-interconnected services and features, should all such services and features be included? Are there any public interest reasons to treat narrowband and broadband data services differently in the context of automatic roaming? In the Wireless Broadband Classification Order,<sup>1</sup> the Commission determined that mobile wireless broadband Internet access service is an information service, and that it is not CMRS. If the

<sup>1</sup> See generally, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901 (2007).

Commission were to impose an automatic roaming obligation on mobile wireless broadband Internet access services, how could it do so in accordance with the determinations in that order? For example, could the Commission base the requirement on Title I ancillary jurisdiction, or on the Title III regulation of radio services? Or should the Commission restrict the automatic roaming mandate only to non-interconnected data services that are not classified as information services? The Commission notes that while a few CMRS providers have requested that the Commission require automatic roaming for all services, including non-interconnected data services provided over enhanced digital networks, other CMRS providers, including several small carriers, are against imposing automatic roaming rules for enhanced data services, arguing that forced roaming would thwart market forces by benefiting only those providers that have opted to invest less on their systems. Given these contradictory positions, what is the appropriate balance to be drawn between providing seamless service accessibility to end-users, and allowing service providers to gain competitive advantages from their investments and innovations?

#### Ex Parte Presentations

5. The rulemaking shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.<sup>2</sup> 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.<sup>3</sup> Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.<sup>4</sup>

#### Comment Filing Procedures

6. Pursuant to §§ 1.415 and 1.419 of the Commission's rules,<sup>5</sup> interested parties may file comments on or before 60 days after publication of the FNPRM in the **Federal Register** and reply comments regarding the FNPRM may be filed on or before 90 days after publication of the FNPRM in the **Federal Register**. All filings related to this FNPRM should refer to WT Docket

No. 05–265. 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.<sup>6</sup>

- **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 website for submitting comments.

- **ECFS filers** must transmit one electronic copy of the comments for WT Docket No. 05–265. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and WT Docket No. 05–265. 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. 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 the Commission continues to experience delays in receiving U.S. Postal Service mail). 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.

- 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.

7. Parties should send a copy of their filings to: Christina Clearwater, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554, or by e-mail to

[christina.clearwater@fcc.gov](mailto:christina.clearwater@fcc.gov) and Won Kim, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554, or by e-mail to [won.kim@fcc.gov](mailto:won.kim@fcc.gov). Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, Room CY–B402, 445 12th Street, SW., Washington, DC 20554, (202) 488–5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

8. Documents in WT Docket No. 05–265 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

9. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov); phone: 202–418–0530 (voice), 202–418–0432 (TTY).

#### Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (the "RFA"),<sup>7</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact of the policies and rules proposed in the Further Notice of Proposed Rulemaking ("FNPRM") on a substantial number of small entities. 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 FNPRM provided in the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").<sup>8</sup> In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>9</sup>

#### A. Need for, and Objectives of, the Proposed Rules

11. Building on the decisions made in the Report and Order, the FNPRM

<sup>7</sup> The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

<sup>8</sup> See 5 U.S.C. 603(a).

<sup>9</sup> See 5 U.S.C. 603(a).

<sup>2</sup> 47 CFR 1.200 *et seq.*

<sup>3</sup> See 47 CFR 1.1206(b)(2).

<sup>4</sup> 47 CFR 1.1206(b).

<sup>5</sup> 47 CFR 1.415, 1.419.

<sup>6</sup> See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

encompasses issues concerning the applicability of the automatic roaming obligation for all wireless providers. In the Report and Order, the Commission clarifies that the automatic roaming is a common carrier obligation and adopts an automatic roaming rule that is applicable to services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network, and to push-to-talk and text messaging service. Recognizing wireless subscribers' increasing reliance on mobile telephony services, especially the growing demand of data services by consumers, the FNPRM seeks comment on whether the Commission should extend the applicability of the automatic roaming requirements to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services. The FNPRM further seeks comment on the implications of extending the automatic roaming obligation in this manner. The Commission's primary objective in this proceeding is to facilitate seamless wireless communications for consumers, even when they are outside of the coverage area of their own service providers.

12. In the FNPRM, the Commission notes that while a few CMRS providers have requested that the Commission require automatic roaming for all services, including non-interconnected data services provided over enhanced digital networks,<sup>10</sup> other CMRS providers, including several small carriers, are against imposing automatic roaming rules for enhanced data services, arguing that forced roaming would thwart market forces by benefiting only those providers that have opted to invest less on their systems.<sup>11</sup> Given these contradictory positions, the FNPRM seeks comments on what is the appropriate balance to be drawn between providing seamless service accessibility to end-users, and allowing service providers to gain competitive advantages from their investments and innovations.

### B. Legal Basis

13. The authority for the actions taken in this FNPRM is contained in Sections 1, 4(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B) of the Communications Act

<sup>10</sup> See ACS Comments at 6; MetroPCS Comments at 25 n.58.

<sup>11</sup> See e.g., EDGE Reply Comments at 1, 8–9; see also, NDNC Comments at 3 (arguing against automating roaming rules because they create a disincentive for companies to further develop their networks).

of 1934, as amended, 47 U.S.C. 151, 154(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B).

### C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

14. The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.<sup>12</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>13</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>14</sup> 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).<sup>15</sup>

15. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission adopts in this Report and Order. The Commission's finding that automatic roaming is a common carrier service subject to protections outlined in sections 201, 202 and 208 of the Act affects all CMRS carriers that provide real-time, two-way switched voice or data service that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Such carriers are obligated to provide automatic roaming. As a common carrier obligation, the automatic roaming rule does not extend to non-interconnected services/features or services that are classified as information services or to services that are not CMRS.

16. Since this Report and Order applies to multiple services, this FRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that

<sup>12</sup> 5 U.S.C. 604(a)(3).

<sup>13</sup> 5 U.S.C. 601(6).

<sup>14</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>15</sup> 15 U.S.C. 632.

could be affected by the Commission's new rules, this FRFA provides information that describes auction results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

17. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"<sup>16</sup> and "Cellular and Other Wireless Telecommunications."<sup>17</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>18</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>19</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>20</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>21</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

18. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless

<sup>16</sup> 13 CFR 121.201, NAICS code 517211.

<sup>17</sup> 13 CFR 121.201, NAICS code 517212.

<sup>18</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>19</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>20</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>21</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

Telecommunications.”<sup>22</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>23</sup> For the census category of “Cellular and Other Wireless Telecommunications,” Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>24</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>25</sup> Thus, under this category and size standard, the majority of firms can be considered small.

19. *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 has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>26</sup> For Block F, an additional small business size standard 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.<sup>27</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>28</sup> 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 C Block 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.<sup>29</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>30</sup> On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.<sup>31</sup> 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.

20. *Narrowband Personal Communications Service.* The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>32</sup> Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.<sup>33</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> The SBA has approved these small business size standards.<sup>37</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.<sup>38</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

21. *Specialized Mobile Radio.* The Commission awards “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.<sup>39</sup> The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>40</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>41</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>42</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>43</sup>

22. The auction of the 1,050 800 MHz SMR geographic area licenses for the

<sup>22</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>23</sup> *Id.*

<sup>24</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>25</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>26</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, 11 FCC Rcd 7824, 7850–7852 paras. 57–60 (1996); see also 47 CFR 24.720(b).

<sup>27</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, 11 FCC Rcd 7824, 7852 para. 60.

<sup>28</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>29</sup> FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. January 14, 1997).

<sup>30</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” public notice, 14 FCC Rcd 6688 (WTB 1999).

<sup>31</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” public notice, 16 FCC Rcd 2339 (2001).

<sup>32</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196 para. 46 (1994).

<sup>33</sup> See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” public notice, PNWL 94–004 (rel. Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” public notice, PNWL 94–27 (rel. Nov. 9, 1994).

<sup>34</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476 para. 40 (2000).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>38</sup> See “Narrowband PCS Auction Closes,” public notice, 16 FCC Rcd 18663 (WTB 2001).

<sup>39</sup> 47 CFR 90.814(b)(1).

<sup>40</sup> *Id.*

<sup>41</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

<sup>42</sup> See “Correction to public notice DA 96–586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” public notice, 18 FCC Rcd 18367 (WTB 1996).

<sup>43</sup> See “Multi-Radio Service Auction Closes,” public notice, 17 FCC Rcd 1446 (WTB 2002).

General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

23. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$3 million or \$15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed supra). One firm has over \$15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

24. *Advanced Wireless Services.* In the AWS-1 Report and Order, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.<sup>44</sup> The AWS-1 Report and Order defines a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The AWS-1 Report and Order also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

25. *Rural Radiotelephone Service.* The Commission uses the SBA small business size standard applicable to cellular and other wireless telecommunication companies, i.e., an entity employing no more than 1,500

persons.<sup>45</sup> 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.

26. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>46</sup> The SBA has approved these definitions.<sup>47</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

27. *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 definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies 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.<sup>48</sup> For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for

the entire year.<sup>49</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>50</sup> Thus, under this category and size standard, the majority of firms can be considered small.

28. *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 subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>51</sup> This small business 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.<sup>52</sup> A "very small business" is defined as 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.<sup>53</sup> The SBA has approved these small size standards.<sup>54</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>55</sup> 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.<sup>56</sup> Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses:

<sup>49</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>50</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>51</sup> Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Third Report and Order, 12 FCC Rcd 10943, 11068-70 paras. 291-295 (1997).

<sup>52</sup> *Id.* at 11068 para. 291.

<sup>53</sup> *Id.*

<sup>54</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

<sup>55</sup> See generally "220 MHz Service Auction Closes," public notice, 14 FCC Rcd 605 (WTB 1998).

<sup>56</sup> See "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," public notice, 14 FCC Rcd 1085 (WTB 1999).

<sup>44</sup> Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, Report and Order, 18 FCC Rcd 25162 (2003) (AWS-1 Report and Order).

<sup>45</sup> 13 CFR 121.201, NAICS code 517212.

<sup>46</sup> Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, 12 FCC Rcd 10785, 10879 para. 194 (1997).

<sup>47</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>48</sup> 13 CFR 121.201, NAICS code 517212.

216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>57</sup> A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.<sup>58</sup>

29. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>59</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>60</sup> 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 \$15 million for the preceding three years.<sup>61</sup> SBA approval of these definitions is not required.<sup>62</sup> An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>63</sup> 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.<sup>64</sup>

30. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order authorizing service in the Upper 700 MHz band.<sup>65</sup> An auction for these licenses, previously scheduled for January 13, 2003, was postponed.<sup>66</sup>

31. *Lower 700 MHz Band Licenses.* The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>67</sup> The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>68</sup> A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>69</sup> Additionally, the Lower 700 MHz Band has a third category of small business status that may be

claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>70</sup> The SBA has approved these small size standards.<sup>71</sup> An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>72</sup> A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.<sup>73</sup> Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>74</sup>

32. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category of “Paging.”<sup>75</sup> Under this category, the SBA deems a business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>76</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>77</sup> Thus, under this category, the majority of firms can be considered small. In the Paging Third Report and Order, the Commission developed a small business size standard for “small businesses” and “very small

<sup>57</sup> See “Phase II 220 MHz Service Spectrum Auction Closes,” public notice, 14 FCC Rcd 11218 (WTB 1999).

<sup>58</sup> See “Multi-Radio Service Auction Closes,” public notice, 17 FCC Rcd 1446 (WTB 2002).

<sup>59</sup> Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, Second Report and Order, 15 FCC Rcd 5299 (2000). Service rules were amended in 2007, but no changes were made to small business size categories. See Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, WT Docket No. 06–150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01–309, Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03–264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06–169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06–229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96–86, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064 (2007).

<sup>60</sup> *Id.* at 5343 para. 108.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 5343 para. 108 n.246 (for the 746–764 MHz and 776–704 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

<sup>63</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” public notice, 15 FCC Rcd 18026 (2000).

<sup>64</sup> See “700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,” public notice, 16 FCC Rcd 4590 (WTB 2001).

<sup>65</sup> Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, Second Memorandum Opinion and Order, 16 FCC Rcd 1239 (2001). Service rules were amended in 2007, but no changes were made to small business size categories. See Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, WT Docket No. 06–150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01–309, Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03–264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06–169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06–229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96–86, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064 (2007).

<sup>66</sup> See “Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled,” public notice, 16 FCC Rcd 13079 (WTB 2003).

<sup>67</sup> See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), Report and Order, 17 FCC Rcd 1022 (2002).

<sup>68</sup> *Id.* at 1087–88 para. 172.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 1088 para. 173.

<sup>71</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

<sup>72</sup> See “Lower 700 MHz Band Auction Closes,” public notice, 17 FCC Rcd 17272 (WTB 2002).

<sup>73</sup> See “Lower 700 MHz Band Auction Closes,” public notice, 18 FCC Rcd 11873 (WTB 2003).

<sup>74</sup> *Id.*

<sup>75</sup> 13 CFR 121.201, NAICS code 517211.

<sup>76</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>77</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>78</sup> 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.<sup>79</sup> The SBA has approved these small business size standards.<sup>80</sup> An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>81</sup> Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 365 carriers reported that they were engaged in the provision of paging and messaging services.<sup>82</sup> Of those, the Commission estimates that 360 are small, under the SBA-approved small business size standard.<sup>83</sup>

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.<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>87</sup> According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.<sup>88</sup> The Commission has estimated that 221 of these are small under the SBA small business size standard.

35. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.<sup>89</sup> The Commission 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.<sup>90</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

36. *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.<sup>91</sup> 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 evaluation in this analysis, the Commission estimates 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.<sup>92</sup> 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.

37. *Fixed Microwave Services.* Fixed microwave services include common carrier,<sup>93</sup> private operational-fixed,<sup>94</sup> and broadcast auxiliary radio services.<sup>95</sup> 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

<sup>78</sup> Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068–70, paras. 291–295, 62 FR 16004 (Apr. 3, 1997).

<sup>79</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998) (SBA Dec. 2, 1998 Letter).

<sup>80</sup> Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98–107 (1999).

<sup>81</sup> *Id.* at 10085, para. 98.

<sup>82</sup> FCC Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3., page 5–5 (Feb. 2007). This source uses data that are current as of October 20, 2005.

<sup>83</sup> *Id.*

<sup>84</sup> Public notice, “Auction of Wireless Communications Services, Auction Notes and Filing Requirements for 128 WCS Licenses Scheduled for April 15, 1997,” DA 97–386, Feb. 21, 1997.

<sup>85</sup> SBA Dec. 2, 1998 Letter.

<sup>86</sup> 13 CFR 121.201, NAICS code 517212.

<sup>87</sup> *Id.*

<sup>88</sup> FCC Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3., page 5–5 (Feb. 2007). This source uses data that are current as of October 20, 2005.

<sup>89</sup> The service is defined in section 22.99 of the Commission’s Rules, 47 CFR 22.99.

<sup>90</sup> 13 CFR 121.201, NAICS code 517212.

<sup>91</sup> 13 CFR 121.201, NAICS code 517212.

<sup>92</sup> Amendment of the Commission’s Rules Concerning Maritime Communications, PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

<sup>93</sup> See 47 CFR 101 *et seq.* (formerly, Part 21 of the Commission’s Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

<sup>94</sup> Persons eligible under parts 80 and 90 of the Commission’s Rules can use Private Operational-Fixed Microwave services. See 47 CFR Parts 80 and 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.

<sup>95</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s rules. See 47 CFR 74. This 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 television pickups, which relay signals from a remote location back to the studio.

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.<sup>96</sup> 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. The Commission noted, however, that the common carrier microwave fixed licensee category includes some large entities.

38. *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.<sup>97</sup> There are presently approximately 55 licensees in this service. The Commission is 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.<sup>98</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>99</sup>

39. *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.<sup>100</sup> 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.<sup>101</sup> The SBA has approved these small business size

standards.<sup>102</sup> 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.

40. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service comprises Multichannel Multipoint Distribution Service (MMDS) systems and Multipoint Distribution Service (MDS).<sup>103</sup> MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of MDS and Educational Broadband Service (formerly known as Instructional Television Fixed Service).<sup>104</sup> Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service ("BRS"), formerly Multipoint Distribution Service ("MDS"),<sup>105</sup> and the Educational Broadband Service ("EBS"), formerly Instructional Television Fixed Service ("ITFS"),<sup>106</sup> to transmit video programming and provide broadband services to residential subscribers.<sup>107</sup> These

<sup>102</sup> 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).

<sup>103</sup> Amendment of Parts 1, 21, 73, 74, and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, WT Docket No. 03–66, RM–10586, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004).

<sup>104</sup> See *id.*

<sup>105</sup> MDS, also known as Multichannel Multipoint Distribution Service ("MMDS"), is regulated by part 21 of the Commission's rules; see 47 CFR Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Part 1 of the Commission's Rules—Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) ("MDS/ITFS Order").

<sup>106</sup> ITFS systems are regulated by Part 74 of the Commission's rules; see 47 CFR Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see MDS/ITFS Order, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

<sup>107</sup> See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report, 20 FCC Rcd

services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.<sup>108</sup> We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.<sup>109</sup> As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.<sup>110</sup> Other standards also apply, as described.

41. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,<sup>111</sup> the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.<sup>112</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>113</sup> In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.<sup>114</sup> MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and

2507, 2565 para. 131 (2006) ("2006 Cable Competition Report").

<sup>108</sup> *Id.*

<sup>109</sup> See Local Multipoint Distribution Service, 12 FCC Rcd 12545 (1997).

<sup>110</sup> 13 CFR 121.201, NAICS code 517510.

<sup>111</sup> MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

<sup>112</sup> 47 CFR 21.961(b)(1).

<sup>113</sup> See ITFS Order, 10 FCC Rcd at 9589.

<sup>114</sup> 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 CFR 121.201, NAICS code 517910.

<sup>96</sup> 13 CFR 121.201, NAICS code 517212.

<sup>97</sup> This service is governed by Subpart I of Part 22 of the Commission's rules. See 47 CFR 22.1001 through 22.1037.

<sup>98</sup> 13 CFR 121.201, NAICS code 517212.

<sup>99</sup> *Id.*

<sup>100</sup> 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 (Feb. 6, 1998).

<sup>101</sup> *Id.*



Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

42. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).<sup>115</sup> The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licensees are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

43. *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.<sup>116</sup> 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.<sup>117</sup> 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.<sup>118</sup> The SBA has approved these small business size standards in the context of LMDS auctions.<sup>119</sup> There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders.

44. *218–219 MHz Service*. The first auction of 218–219 MHz spectrum

<sup>115</sup> In addition, the term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). The Commission does not collect annual revenue data on ITFS licensees.

<sup>116</sup> See *Local Multipoint Distribution Service*, Second Report and Order, 12 FCC Rcd 12545 (1997).

<sup>117</sup> *Id.*

<sup>118</sup> See *id.*

<sup>119</sup> See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

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.<sup>120</sup> In the 218–219 MHz Report and Order and Memorandum Opinion and Order, the Commission 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.<sup>121</sup> 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.<sup>122</sup> Currently, no second auction is scheduled.

45. *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.<sup>123</sup> The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>124</sup> and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent

<sup>120</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fourth Report and Order, 59 FR 24947 (May 13, 1994).

<sup>121</sup> Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (Nov. 3, 1999).

<sup>122</sup> Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (Nov. 3, 1999).

<sup>123</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>124</sup> Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

licensee in the 24 GHz band is a small business entity.

46. *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.<sup>125</sup> "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.<sup>126</sup> The SBA has approved these small business size standards.<sup>127</sup> These size standards will apply to the future auction, if held.

47. *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."<sup>128</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.<sup>129</sup> According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.<sup>130</sup> Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

48. *Part 15 Device Manufacturers*. The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, the Commission will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment

<sup>125</sup> Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz, Report and Order, 15 FCC Rcd 16934, 16967 (2000); see also 47 CFR 101.538(a)(2).

<sup>126</sup> Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz, Report and Order, 15 FCC Rcd 16934, 16967 (2000); see also 47 CFR 101.538(a)(1).

<sup>127</sup> See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

<sup>128</sup> U.S. Census Bureau, "2002 NAICS Definitions: 518111 Internet Service Providers" (Feb. 2004) <http://www.census.gov>.

<sup>129</sup> 13 CFR 121.201, NAICS code 518111 (changed from previous code 514191, "On-Line Information Services," in Oct. 2002).

<sup>130</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 514191 (issued Oct. 2000).

Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."<sup>131</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.<sup>132</sup> According to Census Bureau data for 2002, there were 1,041 establishments in this category that operated for the entire year.<sup>133</sup> Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.<sup>134</sup> Thus, under this size standard, the majority of firms can be considered small.

49. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as

<sup>131</sup> U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>132</sup> 13 CFR 121.201, NAICS code 334220.

<sup>133</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

<sup>134</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

bridges, routers, and gateways."<sup>135</sup> The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: All such firms having 1,000 or fewer employees.<sup>136</sup> According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year.<sup>137</sup> Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499.<sup>138</sup> Thus, under this size standard, the majority of firms can be considered small.

50. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)."<sup>139</sup> The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.<sup>140</sup> According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.<sup>141</sup> Of this

<sup>135</sup> U.S. Census Bureau, 2002 NAICS Definitions, "334210 Telephone Apparatus Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>136</sup> 13 CFR 121.201, NAICS code 334210.

<sup>137</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (released May 26, 2005); <http://factfinder.census.gov>. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 450.

<sup>138</sup> *Id.* An additional 4 establishments had employment of 2,500 or more.

<sup>139</sup> U.S. Census Bureau, 2002 NAICS Definitions, "334290 Other Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>140</sup> 13 CFR 121.201, NAICS code 334290.

<sup>141</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (released May 26, 2005); <http://factfinder.census.gov>. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including

total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.<sup>142</sup> Thus, under this size standard, the majority of firms can be considered small.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

51. Should the Commission decide to extend the automatic roaming requirement to non-interconnected services or features, including services that have been classified as information services, such as broadband Internet access service, or other non-CMRS services, the only reporting or recordkeeping costs incurred will be administrative costs to ensure that an entity's practices are in compliance with the automatic rule. The compliance requirement is that carriers must provide automatic roaming to any requesting technologically compatible carrier outside of the requesting carrier's home market on reasonable and non-discriminatory terms and conditions.<sup>143</sup> The Commission seeks comment on the possible burden such requirements would place on small entities. Also, the Commission seeks comment on whether a special approach toward any possible compliance burden on small entities might be appropriate. Entities, especially small businesses, are encouraged to quantify the costs and benefits of any compliance requirement that may result from this proceeding.

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

52. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>144</sup>

the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 471.

<sup>142</sup> *Id.* An additional 3 establishments had employment of 1,000 or more.

<sup>143</sup> See Further Notice of Proposed Rulemaking, Section 78.

<sup>144</sup> See 5 U.S.C. 603(c).

53. The Commission's primary objective in this proceeding is to facilitate seamless wireless communications for consumers, even when they are outside of the coverage area of their own service providers. The FNPRM seeks to build on the decisions made in the Report and Order. In the Report and Order, the Commission clarifies that the automatic roaming is a common carrier obligation and adopts an automatic roaming rule that is applicable to services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network, and to push-to-talk and text messaging service.<sup>145</sup> Recognizing wireless subscribers' increasing reliance on mobile telephony services, especially the growing demand of data services by consumers, the FNPRM seeks comment on whether the Commission should extend the applicability of the automatic roaming requirements to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services.

54. To the extent that addressing the issue raised in the FNPRM requires modifying the applicability of the automatic roaming rules, the Commission seeks comment on the effect that such rule changes will have on small entities, on whether alternative rules should be adopted for small entities in particular, and on what effect such alternative rules would have on those entities. The Commission invites comment on ways in which the Commission can achieve its goals while at the same time impose minimal burdens on small wireless service providers. Below, the Commission summarizes the issues raised in the FNPRM.

55. *Mobile Data Service Roaming.* The item seeks comment on whether the Commission should extend automatic

roaming obligations to non-interconnected services and features, including information services. To the extent that a covered carrier might be a small entity, the Commission believes that extending the scope of automatic roaming obligation would be a benefit rather than a burden.

56. *Technical Issues.* The item also seeks comment on whether there are any special technical issues (or otherwise) associated with roaming among data networks that may not exist when roaming among CMRS carriers' interconnected voice networks. In the FNPRM, the Commission noted that it would be concerned if requiring a carrier to offer roaming service on its data network to the customers of other carriers resulted in the carrier facing capacity constraints that adversely affect its own customers. The FNPRM, therefore, asks whether a carrier should have the right to limit access to its network by roamers, and what parameters should be considered as justification for such limits.

57. *Jurisdiction over Information Service.* In the Wireless Broadband Classification Order,<sup>146</sup> the Commission determined that mobile wireless broadband Internet access service is an information service, and that it is not CMRS. If the Commission were to impose an automatic roaming on mobile wireless broadband Internet access service as proposed in the FNPRM, the jurisdictional issue should be considered regarding how could we treat the information service for roaming purpose. For example, could the Commission base the requirement on Title I ancillary jurisdiction, or on the Title III regulation of radio services? Alternatively, the FNPRM seeks comment on whether the Commission should restrict the automatic roaming mandate only to non-interconnected data services that are not classified as information services.

*F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules*

58. None.

#### Ordering Clauses

59. Accordingly, *it is ordered that*, pursuant to the authority contained in Sections 1, 4(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B), and Section 1.425 of the Commission's rules, 47 CFR 1.425, this Report and Order and *FNPRM is hereby adopted*.

60. *It is further ordered that* Sections 20.3 and 20.12 of the Commission's rules *are amended* as specified in Appendix A, and such rule amendments shall be effective 60 days after the date of publication of the text thereof in the **Federal Register**.

61. *It is further ordered that* the Joint Petition for Commission Inquiry Pursuant to Section 403 of the Communications Act filed by AIRPEAK Communications, LLC, Airtel Wireless LLC, Cleveland Unlimited, Inc., Leap Wireless International, Inc., MetroPCS Communications, Inc., Punxsutawney Communications, Rural Telecommunications Group, Inc., and Southern Communications Services, Inc. d/b/a SouthernLINC Wireless, on April 25, 2006 *is hereby denied*.

62. *It is further ordered that* the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and the FNPRM, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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<sup>145</sup> See *supra* paras. 2, 65-67.

<sup>146</sup> See *generally*, Wireless Broadband Internet Access Declaratory Ruling. 22 FCC Rcd 5901.