FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 64

[WT Docket No. 98–100; GN Docket No. 94–33; FCC 98–134]

Commercial Mobile Radio Services and Miscellaneous Rules Relating to Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rulemaking* (NPRM) was adopted contemporaneously with a *Memorandum Opinion and Order* that granted in part and denied in part a petition for forbearance filed by the Personal Communications Industry Association (PCIA). The Memorandum Opinion and Order is summarized elsewhere in this edition of the **Federal Register**.

In this *Notice of Proposed Rulemaking,* the Commission asks questions designed to elicit specific information relevant to determining whether, and in what respects, the Commission should forbear from applying additional provisions of TOCSIA to CMRS providers and aggregators, continue applying these provisions to those parties, or modify or eliminate its rules implementing TOCSIA to address the different circumstances faced by CMRS providers. The Commission also seeks new comments regarding forbearance from regulation in wireless telecommunications markets that is responsive to current statutory standards and market conditions.

DATES: Comments are due on or before August 18, 1998, and reply comments are due on or before September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Jeffrey Steinberg at (202) 418–0620 or Kimberly Parker at (202) 418–7240 (Wireless Telecommunications Bureau/ Commercial Wireless Division).

SUPPLEMENTARY INFORMATION: This is a summary of the *Notice of Proposed Rulemaking* in WT Docket No. 98–100, adopted as part of the *Memorandum Opinion and Order and Notice of Proposed Rulemaking,* FCC 98–134, on June 23, 1998 and released July 2, 1998. The *Memorandum Opinion and Order* portion of this document is summarized elsewhere in this edition of the **Federal Register**. The complete text of the *Memorandum Opinion and Order and Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20037.

Synopsis of the Notice of Proposed Rulemaking

I. Notice of Proposed Rulemaking

A. Application of TOCSIA to CMRS Aggregators and OSPs

1. In the *Memorandum Opinion and Order,* with regard to TOCSIA, the Commission determined that, except for the provisions relating to unblocked access and the filing of informational tariffs, the record was inadequate to support forbearance from applying the provisions of TOCSIA and the Commission's implementing regulations to CMRS OSPs and aggregators. PCIA, however, made several arguments that could, if adequately supported, establish grounds for forbearing from enforcing some or all of those provisions. Consistent with the deregulatory intent of the 1996 Act, and with the more specific forbearance directive of section 10 and biennial review requirement of section 11, PCIA's arguments merit further inquiry. Accordingly, in this *Notice of Proposed Rulemaking* the Commission asks questions designed to elicit specific information relevant to determining whether, and in what respects, the Commission should forbear from applying additional provisions of TOCSIA to CMRS providers and aggregators, continue applying these provisions to those parties, or modify or eliminate its rules implementing TOCSIA to address the different circumstances faced by CMRS providers.

2. In this *Notice of Proposed Rulemaking* the Commission proposes to consider applying modified TOCSIA regulations to CMRS providers and aggregators as well as eliminating the application of certain regulations and statutory provisions. The adoption of any appropriate modifications to the regulations implementing the statute should promote the public interest both by relieving CMRS providers and aggregators of regulatory burdens that are ill-suited to the CMRS context and by providing consumers with targeted measures for their protection.

3. The Commission tentatively concludes that any decision to forbear arising out of this *Notice of Proposed Rulemaking* will apply to providers and aggregators of all services classified as CMRS. The Commission seeks comment on this tentative conclusion.

4. Before addressing the provisions of TOCSIA and the Commission's implementing rules individually, the Commission also seeks comment on a few matters that underlie its consideration of many of these provisions. PCIA argues that many of the provisions of TOCSIA are unduly burdensome as applied to broadband PCS providers because these providers may not be able to distinguish users that obtain service through an aggregator from other users of their services. The Commission seeks comment as to whether all broadband PCS providers, and other CMRS providers, are in fact currently unable to identify calls that are placed or received through aggregators. If some aggregator calls can in fact be identified, the Commission requests specific information as to what factors, including the type of CMRS involved, technical attributes of the underlying provider's network, or the type of aggregator arrangement, permit such identification. The Commission also seeks clarification as to whether calls made through aggregators cannot be distinguished from all other CMRS calls, or only from certain types of calls (*e.g.,* roaming calls). To the extent that some aggregator calls cannot be identified, the Commission further seeks comment regarding whether it would be feasible for providers to introduce the capability to identify these calls and, if so, at what cost.

5. The Commission also seeks comment on the different contexts in which CMRS is now or could in the future be offered through aggregators. The record includes evidence of a variety of different transient uses of mobile telephone service, including air-to-ground telephone service on commercial airlines, the leasing of phones along with rental cars, mobile phone booths at special events, and the rental of phones by hotels and shopping malls. The Commission seeks further information on the distinguishing characteristics of each of these arrangements, and on any other contexts in which CMRS is aggregated. In particular, when addressing particular provisions of TOCSIA, commenters should consider whether the statutory provisions and regulations have different impacts depending on the type of aggregator arrangement in question. In particular, the Commission seeks comment regarding how proposed schemes under which the calling party pays for airtime might affect the arrangements between CMRS providers and aggregators and the impact of TOCSIA and the Commission's implementing rules.

6. *Aggregator Disclosure and OSP Oversight of Aggregators.* TOCSIA and the Commission's rules require aggregators to post ''on or near the telephone instrument, in plain view of consumers'' information designed to aid consumers. This information includes, for example, (1) the name, address, and toll-free telephone number of the provider of operator services; (2) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carrier for information on accessing that carrier's service using that telephone. The Commission requires all aggregators to comply with this posting requirement, including aggregators in non-equal access areas. Responsibility for enforcement of the aggregator posting requirement is, in part, placed upon the OSP used by the aggregator. The OSP is obligated to ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the posting requirements.

7. The Commission tentatively concludes that it should continue in the future to require some form of disclosure by CMRS aggregators similar to that prescribed by the Act. In particular, the Commission believes customers of CMRS aggregators will benefit from access to the same information that is available to direct customers of CMRS providers, including the identity of and how to contact the underlying service provider, how to obtain information about rates, and how to lodge complaints about service. For example, if certain aggregators are prone to frequently changing their underlying service provider, might it be costly for them to continuously update the disclosure information? The Commission also welcomes comment on the benefits of disclosure to consumers.

8. The Commission therefore tentatively concludes that it should forbear from requiring CMRS aggregators to post disclosure information ''on or near the telephone instrument,'' and instead should permit some or all CMRS aggregators to use some other reasonable means of disclosure. For example, the Commission might permit CMRS aggregators to provide the required information to the consumer at the point of establishing a contractual relationship, *e.g.*, at the car rental counter or concierge desk. The Commission seeks comment regarding this tentative conclusion and how it should be implemented.

9. The Commission also seeks comment on whether certain disclosures should be required of CMRS aggregators in addition to those mandated under section 226(c) of the Act and section 64.703(b) of the Commission's rules. Specifically, CMRS providers typically impose a number of charges on end users that are not commonly encountered in the wireline context, including roaming charges, charges for airtime, and charges for incoming calls. The Commission believes that CMRS subscribers are typically aware of these charges, but that transient users of CMRS may not be. The Commission therefore seeks comment on whether CMRS aggregators should be required to disclose the existence of these or other charges. If so, the Commission further seeks comment regarding the precise nature of the required disclosure. For example, should the aggregator provide information regarding the boundaries of the home calling area?

10. Section 64.703(b)(3) of the Commission's rules requires that in the case of a pay telephone, an aggregator must disclose the local coin rate for the location. The Commission seeks comment on whether this requirement is appropriately applied to CMRS aggregators. Commenters should specifically address any relevant differences between CMRS and wireline coin-operated phones.

11. The Commission also tentatively concludes that it should retain the requirement that CMRS OSPs ensure by contract or tariff that aggregators will comply with the disclosure requirements. PCIA argues, however, that compliance with the oversight requirement is problematic for CMRS OSPs because, unlike wireline OSPs, they typically do not have contracts with aggregators, and indeed may not know who aggregators of their services are. The Commission seeks comment regarding the prevalence of contractual arrangements between CMRS aggregators and OSPs, and how this compares with the wireline context. To the extent such contracts do not exist, the Commission seeks comment on the costs and benefits of requiring CMRS aggregators and OSPs to enter into contracts. The Commission also seeks comment on practical alternatives to contractual provisions as a means of effecting OSP oversight, and on whether OSPs that do not have contracts with their aggregators, or do not know who their aggregators are, should be exempt from the oversight requirement. In addition, the Commission welcomes comments on the benefits of oversight by CMRS OSPs.

12. *OSP Identification, Disclosure, and Termination at No Charge.* TOCSIA requires that every OSP audibly and distinctly identify itself to every person who uses its operator services before any charge is incurred by the consumer, permit the consumer to terminate the telephone call at no charge before the call is connected, and disclose to the consumer upon request, at no charge, a quotation of its rates or charges for the call, the methods by which such rates or charges will be collected, and the methods by which complaints concerning such rates, charges, or collection practices will be resolved. Our regulations reiterate these requirements, and in addition the Commission requires that the OSP disclose audibly to the customer how to obtain the price of a call before the call is connected.

13. The Commission seeks additional comments on PCIA's arguments in favor of forbearance. First, PCIA and commenters supporting its position argue that the OSP disclosure and call termination requirements are unnecessary to protect consumers because CMRS providers' rates and practices are reasonable, competitive market forces motivate CMRS providers to offer services at reasonable rates, and CMRS providers generally disclose rate information as a matter of sound business practice.

14. The Commission also seeks comment on the disclosure practices of CMRS OSPs, and in particular whether they make relevant information available to consumers on each call and inform consumers before each call how to obtain such information. In addition, assuming providers typically do act reasonably and disclose their rates and practices, the Commission seeks comment on whether these circumstances are sufficient grounds for forbearing from regulation. The Commission also seeks comment on whether continuing to apply disclosure requirements to CMRS OSPs on each call is consistent with its decision in the *Memorandum Opinion and Order* to forbear from requiring these providers to file informational tariffs.

15. Second, PCIA argues that enforcement of these requirements is not in the public interest because compliance with these requirements is unduly costly and burdensome for CMRS OSPs. The Commission seeks specific information regarding the costs of compliance for CMRS OSPs. To the extent that CMRS providers cannot distinguish calls made through aggregators from other calls, the

Commission further seeks information regarding the costs of making the required identification and disclosures on a larger universe of calls.

16. Finally, PCIA argues that the OSP disclosure requirements are ill suited to CMRS operator services because, unlike in the wireline context, CMRS OSPs typically have no direct relationship with the end user and do not set the end user's rates. Rather, according to PCIA, the aggregator sets the customer's rates and bills the customer directly. The Commission seeks comment on the billing practices that prevail in CMRS aggregator contexts, and on the variations that may exist in these practices.

17. *Billing for Unanswered Calls.* TOCSIA and the Commission's regulations forbid OSPs from billing for unanswered telephone calls in areas where equal access is available, and from knowingly billing for unanswered telephone calls in areas where equal access is not available. The Commission seeks comment about CMRS industry practices with respect to billing for unanswered calls and any variations in those practices. In particular, the Commission seeks information regarding what constitutes billable airtime and whether CMRS providers calculate airtime differently for customers who obtain service through aggregators than for other users of their networks. Commenters should further address the cost of implementing and complying with this provision for CMRS calls made through aggregators. To the extent that CMRS providers cannot distinguish between public and other users of the network, commenters should address the costs of forgoing billing for unanswered calls for a larger set of users.

18. *Call Splashing.* Both TOCSIA and the implementing regulations forbid OSPs from engaging in ''call splashing'' or billing for a call that does not reflect the originating location of the call without the consumer's informed consent.

19. The Commission seeks comment on the costs and benefits of applying the call splashing prohibition to CMRS. In particular, the Commission seeks comment on whether CMRS OSPs have any history of call splashing to the detriment of consumers, and on whether situations exist or could arise where CMRS OSPs could have an incentive to engage in call splashing that would harm consumers. In this regard, the Commission requests comment on the prevalence of distance-insensitive billing in CMRS markets, how this billing practice affects CMRS OSPs' incentives to engage in call splashing and the potential for call splashing to harm consumers, and how these conditions compare with the situation in wireline services. In addition, the Commission seeks information on the costs to CMRS OSPs of complying with the call splashing prohibition for calls made through aggregators and, to the extent that CMRS providers cannot distinguish between customers of aggregators and other users, the costs of complying with this prohibition on other calls as well.

20. *OSP Publication of Changes in Services.* Under TOCSIA, the Commission is required to establish a policy for requiring providers of operator services to make public information about recent changes in operator services available to consumers. Pursuant to that directive, the Commission has required OSPs to regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in operator services and in the choices available to consumers in that market. The Commission seeks comment on the costs and benefits of requiring CMRS OSPs to publish regular reports of their changes in service in light of the nature of the services provided, the level of abuses, and carriers' customary disclosure practices. The Commission is also interested in how this cost benefit analysis compares with the analysis for wireline OSPs. Commenters should particularly consider whether the benefit of these reports to consumers may vary for different CMRS aggregator arrangements, and therefore whether it may make sense to modify or forbear from enforcing the rule only for certain types of arrangements.

21. *Routing of Emergency Calls.* TOCSIA requires the Commission to establish minimum standards for OSPs and aggregators to use in the routing of emergency telephone calls. Under § 64.706 of the Commission's rules, which implements this provision, OSPs and aggregators are required to ensure immediate connection of emergency telephone calls to the appropriate emergency service of the reported location of the emergency, if known, and if not known, of the originating location of the call.

22. The record, however, is almost totally devoid of comments addressing the emergency call routing obligation. The Commission seeks comment as to whether § 64.706 is appropriately applied to CMRS aggregators and OSPs, in light of the Commission's E911 rules. Commenters should specifically address the costs and benefits of applying § 64.706 in the CMRS context. In addition to addressing the impact of § 20.18, commenters should consider whether § 64.706 remains necessary and appropriate as applied to any CMRS aggregators and OSPs that are not covered by the E911 rule, or whether those providers that are not covered by the E911 rule should be excluded from any emergency call routing obligation because they are incapable of handling emergency calls.

B. Forbearance From Other Statutory and Regulatory Provisions

23. The Commission received numerous comments and reply comments on the *Further Forbearance NPRM,* 59 FR 25432 (May 16, 1994), but the passage of the Telecommunications Act of 1996 made sweeping changes which not only affected all consumers and telecommunications service providers, but also greatly expanded the Commission's forbearance authority. Section 332(c) authorizes the Commission to forbear from applying most provisions of Title II to any CMRS ''service or person.'' Under section 10, by contrast, the Commission may forbear from applying almost any regulation or provision of the Act to any ''telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of their geographic markets.'' The 1996 Act also added section 11, which directs the Commission biennially to review all of its telecommunications regulations and repeal or modify any regulations that the Commission determines are no longer necessary in the public interest as the result of meaningful economic competition between providers of service. Because these legal changes and changes in the telecommunications marketplace have made portions of the record in the *Further Forbearance NPRM* stale, the Commission terminates that proceeding and seeks new comments regarding forbearance from applying any regulation or provision of the Act to wireless telecommunications carriers licensed by the Commission. Such carriers include telecommunications carriers licensed under part 21 (domestic public fixed radio services), part 22 (public mobile radio services), part 24 (personal communications services), part 90 (private land mobile radio services), and part 101 (fixed microwave services) of the Commission's rules.

24. The Commission believes the goals identified in the *CMRS Second Report and Order* mirror those set for it by Congress in the 1996 Act: reduce the regulatory burden upon, and foster

vigorous and fair competition among, telecommunications providers. The Commission is continually striving to meet those goals. For example, the Commission's decision to forbear from applying tariffing requirements in sections 203, 204, and 205 to CMRS providers significantly reduced the filing burdens placed upon such providers. Continuing this trend, the Commission recently eliminated in most circumstances the requirement that telecommunications carriers licensed by the Wireless Telecommunications Bureau obtain prior Commission approval before consummating *pro forma* transactions.

25. Section 332(c) and section 10 differ in scope, yet set forth similar three-pronged tests that must be met in order for the Commission to exercise forbearance authority. Since the *Further Forbearance NPRM* was issued prior to the passage of section 10, the Commission seeks comment as to whether the differences in language between section 332(c) and section 10 necessitate a departure from the criteria the Commission enunciated in the *Further Forbearance NPRM* as a test for whether it would use its authority to forbear. The Commission further asks, since its authority under section 332(c) was limited to deregulation of commercial mobile services, whether it should extend any forbearance pursuant to section 10 to wireless carriers other than those classified as CMRS, *e.g.*, wireless competitive local exchange carriers (CLECs), in order to promote their role in providing competition in the local exchange market.

26. If commenters seek forbearance from particular statutory provisions or regulations, the Commission asks them to primarily focus their analysis on whether forbearance is warranted under the three-pronged test of either section 332 or section 10. In connection with the third prong of the test, the public interest standard, commenters should show whether the costs incurred by carriers to comply with particular provisions outweigh the benefits to the public to be gained in applying them, as well as whether forbearance from particular statutory provisions would enhance future competition from a diversity of entities and thus tend to justify a finding that forbearance served the public interest.

27. The Commission also seeks comment on whether there exist, within CMRS and other wireless telecommunications markets, types of providers for which application of a particular statutory or regulatory provision will either pose undue costs or yield no benefits to the public. For example, if the costs of regulation are fixed, smaller providers could be more likely than other types of providers to be burdened by the costs of regulation. The Commission believes two factors of the public interest test that it has proposed to apply under section 332(c) can serve to guide its determinations in this area. The first is whether differential costs of compliance with particular laws or regulations make forbearance appropriate for particular types of providers. The second is whether the public interest benefits from application of particular provisions vary among the different types of providers.

28. In addition, the Commission asks interested parties to comment on how forbearance for particular types of providers would comport with the goal of regulatory symmetry, bearing in mind that the Commission's forbearance authority permits different regulation of different providers.

29. Finally, the Commission asks interested parties to suggest any other factors or alternatives that it should consider when evaluating forbearance petitions affecting telecommunications services or providers licensed or regulated by the Wireless Telecommunications Bureau.

Paperwork Reduction Act

30. The proposals contained herein do not contain any information collections requiring approval by the Office of Management and Budget. The Commission seeks comments regarding whether, and in what respects, it should forbear from applying already established rules.

Initial Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the rules proposed in the NPRM (Notice) in WT Docket No. 98–100. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

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

32. In this NPRM, the Commission proposes to consider forbearing from applying provisions of section 226 of the Communications Act (Telephone Operator Consumer Services Improvement Act or TOCSIA) to Commercial Mobile Radio Service (CMRS) providers and aggregators of CMRS, as well as modifying its rules applying TOCSIA to those entities. Specifically, the Commission proposes to: (1) continue to require some form of disclosure to consumers by CMRS aggregators similar to that mandated by section 226(b)(1)(D) of the Act, although the precise nature of the disclosure may be modified; (2) forbear from requiring CMRS aggregators to post disclosure information ''on or near the telephone instrument,'' and instead permit all or some CMRS aggregators to use some other reasonable means of disclosure; and (3) continue to require CMRS providers of operator service (OSPs) to ensure by contract or tariff that aggregators will comply with the disclosure requirements.

33. In addition, the Commission requests comment on whether it should forbear from applying other provisions of TOCSIA in the CMRS context or whether these requirements should be modified as applied to CMRS aggregators and OSPs. The Commission's objective is to formulate rules that are responsive to the differences between CMRS and fixed services provided through aggregators, that avoid imposing unnecessary burdens on CMRS OSPs and aggregators, and that provide consumers who obtain CMRS through aggregators with protections comparable to those enjoyed by other consumers of CMRS.

34. The Notice also seeks comment on forbearance from applying other provisions of the Act to all wireless telecommunications carriers licensed by the Commission, including telecommunications carriers licensed under part 21 (domestic public fixed radio services), part 22 (public mobile radio services), part 24 (personal communications services), part 90 (private land mobile radio services), and part 101 (fixed microwave services) of our rules. The Commission's objective is to reduce regulatory burdens upon providers of wireless telecommunications services where consistent with the public interest, and thus to foster vigorous and fair competition among these providers.

B. Legal Basis

35. The proposed action is authorized under sections 1, 4(i), 10, 11 and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, 161 and 332(c).

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

36. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our 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.'' A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, there are 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were 85,006 such jurisdictions in the United States.

37. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. 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) meets any additional criteria established by the Small Business Administration (SBA).

38. The Notice could result in rule changes that, if adopted, would affect all small businesses that are aggregators or providers of CMRS operator services as well as all small business that are wireless telecommunications carriers. To assist the Commission in analyzing the total number of affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from the Notice. The Commission estimates the following number of small entities may be affected by the proposed rule changes:

39. Cellular Radiotelephone Service. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 1,000 or more employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes of this IRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November 1997, there are 804 companies reporting that they engage in cellular or PCS service. It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this IRFA, the Commission estimates that there are fewer than 804 small cellular service carriers.

40. Broadband PCS. The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. This definition of ''small entity'' in the context of broadband PCS auctions has been approved by the SBA. The Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block auction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

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

42. 220 MHz Radio Services. Commercial licenses in the 220–222 MHz band are divided into two categories. Phase I licensees are licensees granted initial authorizations from among applications filed on or before May 24, 1991. The Commission has not adopted a definition of small business specific to Phase I 220 MHz licensees. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. Approximately 1,515 non-nationwide Phase I licenses and four nationwide Phase I licenses have been awarded. The Commission estimates that almost all of the holders of these licenses are small entities under the SBA definition.

43. Phase II licensees are licensees granted initial authorizations from among applications filed after May 24, 1991. The Commission has adopted a two-tiered definition of small businesses in the context of auctioning Phase II licenses in the 220–222 MHz band. A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenue for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenue for the three preceding years of not more than $15 million. This definition of small business has been

approved by the SBA. There have not been any auctions to date of 220 MHz licenses, and it is therefore impossible accurately to predict how many eventual licensees out of the auctions process will be small entities. Based on its experience with auctions of SMR licenses in the 900 MHz band, however, the Commission estimates that for the 908 auctionable licenses in the 220 MHz band, there will be approximately 120 applicants, of which approximately 92 will be small entities within either prong of the definition approved by the SBA.

44. Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses.

45. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

46. Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes for purposes of this IRFA 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 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. There were 10 winning bidders who qualified as small entities in the 800 MHz auction.

47. Offshore Radiotelephone Service. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

48. General Wireless Communications Service. This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications.

49. Common Carrier Fixed Microwave Services. Microwave services include common carrier fixed, private operational-fixed, and broadcast auxiliary radio services. Of these, only operators in the common carrier fixed microwave service are telecommunications carriers that could be affected by the adoption of rules pursuant to this Notice. At present, there are 22,015 common carrier fixed microwave licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. The Commission estimates that for purposes of this IRFA all of the common carrier fixed microwave licensees would qualify as small entities under the SBA definition for radiotelephone communications.

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

51. Marine Coast Service. The Commission has not adopted a definition of small business specific to the marine coast service. The Commission will use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 10,500 licensees in the marine coast service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

52. Wireless Communications Services (WCS). WCS is a wireless service which can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons, while it seeks SBA approval of a more refined definition. The Commission auctioned geographic area licenses in the WCS service. Based upon the information obtained in the auctions process, the Commission concludes that eight WCS licensees are small entities.

53. In addition to the above estimates, new licensees in the wireless radio services will be affected by these rules, if adopted. CMRS aggregators will also be affected by these rules, if adopted. The Commission does not have any basis for estimating the number of CMRS aggregators that may be small entities. To assist the Commission in analyzing the numbers of potentially affected small entities, commenters are requested to provide information regarding how many small business entities may be affected by the proposed rules.

D. Description of Reporting, Record Keeping and Other Compliance Requirements

54. The Notice proposes no additional reporting, recordkeeping or other compliance measures and seeks to minimize such burdens for CMRS aggregators and OSPs. As noted, the Commission proposes to forbear from

requiring CMRS aggregators to post disclosure information ''on or near the telephone instrument,'' and instead permit all or some CMRS aggregators to use some other reasonable means of disclosure.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The NPRM proposes to reduce the administrative burdens and cost of compliance with TOCSIA and the Commission's implementing regulations for CMRS aggregators and OSPs generally. This reduction of burden will economically benefit small entities within these categories. In addition, the Commission seeks comment on ways of reducing regulatory burdens by forbearing from applying any provisions of the Communications Act to wireless telecommunications carriers, including those carriers that are small business entities. The Commission specifically requests comment on whether forbearance from applying any statutory provision is appropriate with respect to smaller CMRS providers.

F. Federal Rules Which Overlap, Duplicate, or Conflict With These Proposed Rules

56. None.

V. Ordering Clauses

57. *It Is Ordered* that, pursuant to sections 1, 4(i), 10, 11, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 161, 303(g), 303(r) and 332, a Notice of Proposed Rulemaking is hereby adopted.

58. *It Is Further Ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before August 3, 1998, and reply comments on or before August 18, 1998. Comments and reply comments should be filed in WT Docket No. 98–100. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. For each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. Send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. For further information contact Jeffrey Steinberg at 202–418–0620 or Kimberly Parker at 202–418–7240.

59. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.203, and 1.206(a).

60. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth herein. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 20

Communications common carriers, Communications equipment.

47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission,

Magalie Roman Salas,

Secretary.

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