

2. We revise section 72.5 to read as follows:

§ 72.5 Exemptions.

Requesters are exempt from submitting review and processing fees for:

(a) Requests for map changes based on mapping or study analysis errors;

(b) Requests for map changes based on the effects of natural changes within SFHAs;

(c) Requests for a Letter of Map Amendment (LOMA);

(d) Requests for map changes based on federally sponsored flood-control projects where 50 percent or more of the project's costs are federally funded;

(e) Requests for map changes based on detailed hydrologic and hydraulic studies conducted by Federal, State, or local agencies to replace approximate studies conducted by FEMA and shown on the effective FIRM; and

(f) Requests for map changes based on flood hazard information meant to improve upon that shown on the flood map or within the flood study will be exempt from review and processing fees. Improvements to flood maps or studies that partially or wholly incorporate man-made modifications within the special flood hazard area will not be exempt from review and processing fees.

Dated: September 9, 1999.

James L. Witt,

Director.

[FR Doc. 99-24559 Filed 9-22-99; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 97-213; FCC 99-11]

Implementation of the Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes limited rules to ensure that carriers have policies and procedures in place that require the affirmative intervention by and knowledge of, their employees in effectuating any interception through their switching premises, and that such interception is done lawfully and documented carefully. The decision mandates that this be done by appointment of a designated senior officer or employee by each carrier

company who is responsible for maintaining such security procedures. The decision also establishes reporting and recordkeeping requirements for informing law enforcement officials of all acts of unauthorized electronic surveillance that occur on the carriers' premises, as well as any compromises of the carriers' systems security and integrity procedures that involve the execution of electronic surveillance. Finally, the decision adopts filing requirements for large and small carriers. This document contains modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, and has been submitted to the Office of Management and Budget (OMB) for review under the section 3507 of the PRA.

DATES: Effective December 22, 1999 except for §§ 64.2103, 64.2104, and 64.2105, which contain information collection requirements that have not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. Public comment on the information collections are due November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Wasilewski, 202-418-1310. For further information concerning the information collections contained in this Report and Order, contact Les Smith, Federal Communications Commission, Room 1A-804, 445 12th Street, S.W., Washington, DC 20054, or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (R&O) in CC Docket No. 97-213; FCC 99-11, adopted January 29, 1999, and released March 15, 1999. The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY-B400, 445 12th Street, S.W., Washington, DC.

Synopsis of the Report and Order

1. The Commission adopts a Report and Order (R&O) in CC Docket No. 97-213, regarding implementation of the Communications Assistance for Law Enforcement Act (CALEA).¹ The R&O establishes systems security and integrity regulations that all telecommunications carriers must follow to comply with section 105 of

CALEA. The regulations were proposed in the Notice of Proposed Rule Making (NPRM) in this proceeding, which can be found at 62 FR 63302, November 11, 1997. The R&O adopts these regulations pursuant to the authority granted to the Commission under section 105 of CALEA and section 229 of the Communications Act of 1934, as amended. Accordingly, the R&O finds that telecommunications carriers must ensure that "any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier"² acting in accordance with the regulations adopted in the R&O and sections 229(b) and (c) of the Communications Act.

2. While recognizing that certain carriers currently have existing policies and procedures in place to secure and protect their telecommunications systems in a manner that would comply with section 105 of CALEA and sections 229(b) and (c) of the Communications Act, the R&O finds that the void created by those carriers without such policies and procedures demands adoption of minimum set of requirements that will ensure compliance with section 105 of CALEA and sections 229(b) and (c) of the Communications Act. The R&O declines, however, to adopt specific or detailed policies and procedures that telecommunications carriers must include within their internal operating practices to ensure compliance, because, as the R&O further finds, it is not the Commission's responsibility to "micro-manage" telecommunications carriers' corporate policies. The rules adopted in the R&O are intended to provide carriers with guidance as to the minimum requirements necessary to achieve compliance with section 105 of CALEA and sections 229(b) and (c) of the Communications Act in the least burdensome manner possible.

3. The R&O mandates that carriers, as part of their policies and procedures, must appoint the senior authorized officer(s) or employee(s) whose job function includes being a point of contact for law enforcement on a daily, around-the-clock basis. Carriers must include in their policies and procedures a description of the job functions of such points of contact and a method to enable law enforcement authorities to contact these individuals.

4. Although the Commission declines to adopt a proposal to require carriers to

¹Public Law 103414, 108 Stat. 4279 (1994).

²47 U.S.C. 1004.

respond to an interception request within a specific time frame, the R&O encourages carriers to respond promptly and comply with any other relevant statutes concerning their duty to assist law enforcement authorities in performing an interception of communications or facilitating access to call-identifying information.

5. The R&O next clarifies the term "appropriate authorization," as used in section 229(b)(1)(A) of the Communications Act, which requires that common carriers establish appropriate personnel supervision and control policies and procedures "to require appropriate authorization to activate interception of communications or access to call-identifying information(.)"³ The R&O, based on the explicit language of section 105 of CALEA and section 229(b) of the Communications Act, concludes that "appropriate authorization" refers both to the legal authorization that law enforcement must present to a carrier in the form of an order, warrant, or other authorization issued by a judge or magistrate pursuant to federal or state statutory authority (appropriate legal authorization), and to the authorization a carrier's employee must receive from the carrier to assist law enforcement (appropriate carrier authorization) to engage in the interception of communication or the access to call-identifying information. The R&O concludes that a carrier satisfies the requirement for appropriate authorization only when a carrier's employee implements the interception of communications or access to call-identifying information in accordance with appropriate carrier authorization after having received legal authorizations.

6. The R&O also requires carriers to state in their internal policies and procedures that carrier personnel must receive both appropriate legal authorization and appropriate carrier authorization before taking any action to affirmatively implement the interception of communications or access to call-identifying information. Carriers must also, upon receipt of a proffered authorization by law enforcement, determine that such authorization is what it purports to be, and that it can be implemented technically, including that it is sufficiently and accurately detailed to enable the carrier to comply with its terms. The Commission notes, however, that its determination in the R&O under section 105 of CALEA and section 229 of the Communications Act regarding

the level of scrutiny applicable to a carrier's review of a court order or certification is in no way intended to alter or replace any standard or level of scrutiny imposed under any other state or federal statute. Accordingly, the R&O requires that, as part of their policies and procedures, carriers should also comply with appropriate authorization requirements contained in any other relevant state or federal statute when reviewing an authorization, and must ensure that their designated senior officer(s) or employee(s) responsible for affirmatively intervening to activate the interception of communications or access to call-identifying information is fully apprised of any additional relevant federal and state statutory provisions.

7. The R&O further provides that carriers must report all acts of unauthorized electronic surveillance that occur on their premises, as well as any compromises of the carrier's system security and integrity procedures that involve the execution of electronic surveillance, to the appropriate law enforcement agency. The R&O does not, however, impose a specific time frame within which a carrier must report a security breach. Rather, the R&O requires that carriers report such breaches within a reasonable period of time and in compliance with any other relevant statutes.

8. Additionally, in order to comply with section 229(b)(2), the carrier must maintain secure and accurate records of each interception of communication or access to call-identifying information, made with or without appropriate authorization, in the form of single certification. This certification must include, at a minimum: (1) The telephone number(s) and/or circuit identification numbers involved; (2) the start date and time of the opening of the circuit for law enforcement; (3) the identity of the law enforcement officer presenting the authorization; (4) the name of the judge or prosecuting attorney signing the authorization; (5) the type of interception of communications or access to call-identifying information; and (6) the name of the telecommunications carrier's personnel who is responsible for overseeing the interception of communication or access to call-identifying information and who is acting in accordance with the carrier's policies established under section 229(b)(1). The designated employee must sign each record, to certify the record is complete and accurate. The Order mandates that carriers maintain these records for ten years and keep records relating to the content of authorized interception for a period of

time determined by individual carriers in accordance with policies and procedures established under section 229(b)(1) of the Communications Act and applicable state and federal statutes of limitation.⁴

9. The R&O adopts filing requirements in accordance with section 229(b)(3) of the Communications Act. In this regard, the R&O finds that all telecommunications carriers must submit to the Commission the policies and procedures adopted to comply with the requirements established under sections 229(b)(1) and (2), regardless of carrier size. The Commission will review carriers' policies procedures to determine whether they comply with the Commission's Rules. If the Commission determines that a carrier's policies and procedures are non-compliant, the carrier shall modify its policies and procedures in accordance with an order released by the Commission. Moreover, the Commission shall conduct investigations as may be necessary to ensure compliance by telecommunications carriers with the requirements of rules established by the Commission under section 229 of the Communications Act and section 105 of CALEA.

10. The R&O mandates that all carriers file their policies and procedures within 90 days from the effective date of the rules adopted in this R&O, and they must further file their policies and procedures with the Commission no later than 90 days after the effective date of a merger or divestiture in which a carrier becomes the surviving or divested entity. This 90 day filing requirement also applies to carriers who amend existing policies and procedures already filed with the Commission.

11. Finally, the R&O does not adopt any rules (in addition to the liabilities established by Congress in CALEA) that extend criminal and/or civil liability, vicarious or otherwise, to a carrier for the violations of section 105 of CALEA and section 229 of the Communications Act. Instead, if a carrier violates the Commission's rules implementing section 105 of CALEA, the Commission shall enforce, pursuant to section 229(d), the penalties articulated in

⁴ On July 16, 1999, the Commission adopted an Order on Reconsideration (Order) in this proceeding (FCC 99-184), which revises the recordkeeping and maintenance requirements adopted in the R&O. The Order eliminates the requirement that telecommunications carriers retain the content or call-identifying information of any interceptions of communications and the 10 year record retention requirement. Instead, carriers must retain the certification for a "reasonable period of time."

³ 47 U.S.C. 229(b)(1)(A).

sections 503(b) of the Communications Act and 1.80 of the Commission's Rules.

Paperwork Reduction Act of 1995 Analysis

12. The actions contained in this R&O have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose modified reporting and recordkeeping requirements or burdens on the public. Implementation of these modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget, as prescribed by the Act. The new or modified paperwork requirements contained in the Report and Order will go into effect December 22, 1999, dependent on OMB approval.

Final Regulatory Flexibility Analysis

13. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comments on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996).⁵

(1) Need for and Purpose of this Action

14. This Report and Order responds to the legislative mandate contained in the Communications Assistance for Law Enforcement Act, Public Law 103-414, 108 Stat. 4279 (1994). The Commission, in compliance with 47 U.S.C. 229, promulgated rules in this Report and Order to ensure the prompt implementation of section 105 of CALEA. In enacting CALEA, Congress sought to "make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes. . . ." Specifically, Congress sought to balance three key policies with CALEA: "(1) to preserve a narrowly focused capability for law enforcement agencies to carry out properly authorized intercepts; (2) to protect privacy in the face of increasingly powerful and personally revealing technologies; and (3) to avoid impeding the development of new

communications services and technologies."⁷

15. The rules adopted in this Report and Order implement Congress's goal to clarify a telecommunications carrier's duty to cooperate with law enforcement agencies that request lawful electronic surveillance, and to balance the three key policies, enumerated in this decision. The objective of the rules adopted in this Report and Order is to implement, as quickly and effectively as possible, the national telecommunications policy for telecommunications carriers to support the lawful electronic surveillance needs of law enforcement agencies.

(2) Summary of the Issues Raised by Public Comments Made in Response to the IRFA

Summary of Initial Regulatory Flexibility Analysis (IRFA)

16. In the NPRM, the Commission performed an IRFA and asked for comments that specifically addressed issues raised in the IRFA. In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by section 601(3) of the RFA.

17. In the IRFA, the Commission reiterated its proposed rules in the NPRM requiring telecommunications carriers to establish policies and procedures governing the conduct of officers and employees who are engaged in surveillance activity. The proposed rules required telecommunications carriers to maintain records of all interceptions of communications and call identification information. Additionally, the proposed rules required telecommunications carriers to execute an affidavit for, and maintain a separate record of, each electronic surveillance. Furthermore, the Commission sought comment on the length of time telecommunications carriers should retain electronic surveillance records, noting that 18 U.S.C. 2518(8)(a) calls for a retention period of ten years for intercepted communications. The proposed rules also required telecommunications carriers to report security breaches (compromises to lawful electronic surveillance and illegal electronic surveillance) to both the Commission and the affected law enforcement agency.

18. In the IRFA, the Commission reiterated that our proposed rules require telecommunications carriers classified as Class A companies

pursuant to 47 U.S.C. 32.11 to file individually with the Commission a statement of its processes and procedures used to comply with the systems security rules promulgated by the Commission. Telecommunications carriers classified as Class B companies pursuant to 47 U.S.C. 32.11 could elect either to file a statement describing their security processes and procedures or to certify that they observed procedures consistent with the security rules promulgated by the Commission. The Commission noted that because electronic surveillance capacity and capability requirements are still being developed it is not possible to predict with certainty whether the costs of compliance will be proportionate with regard to both small and large telecommunications carriers.

19. In the IRFA, the Commission tentatively concluded that a substantial number of telecommunications carriers who have been subjected to demands from law enforcement personnel to provide lawful interceptions and call-identifying information for a period time preceding CALEA already have in place practices for proper employee conduct and recordkeeping. The Commission noted that, as a practical matter, telecommunications carriers need such practices to protect themselves from suit by persons who claim they were the victims of illegal surveillance. By providing general guidance regarding the conduct of carrier personnel and the content of records in the proposed regulations, the Commission intended telecommunications carriers to use their existing practices to the maximum extent possible. Thus, in the IRFA, the Commission tentatively concluded that the additional cost to most telecommunications carriers for conforming to the Commission's proposed regulations, should be minimal.

20. *Comments.* Only one party filed comments in response to the IRFA, but many parties commented on the Commission's proposed system security and integrity regulations in response to the NPRM. The record provided by all of these commenting parties clearly disfavors the amount of recordkeeping proposed by the Commission in the NPRM, and includes numerous suggestions to reduce the amount of paperwork required by the proposed regulations without jeopardizing statutory compliance. Thus, the final regulations reduce significantly the amount of paperwork required of telecommunications carriers. Other parties commented that the Commission should not promulgate any new rules to

⁵ Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 *et. seq.*

⁶ CALEA, *supra*, at preamble.

⁷ H. Rep. No. 103-837 at 23, *reprinted* in 1994 U.S.C.C.A.N. 3489.

implement CALEA. A plain reading of 47 U.S.C. 229(b) shows that Congress requires the Commission to promulgate regulations that ensure the systems security and integrity of carriers, by compelling carriers to submit their CALEA systems security and integrity policies and procedures to the Commission and provide records that prove to the Commission how each telecommunications carrier is complying with the requirements of CALEA section 105. Thus, commentary against any new regulations contradicts the plain language of 47 U.S.C. 229.

(3) Description and Estimates of the Number of Entities Affected by This Report and Order

21. Consistent with prior practice, the Commission shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as mentioned above, the Commission includes small incumbent LECs in the FRFA. Accordingly, the Commission's use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." The Commission uses the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

22. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted in the R&O may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.⁸ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."⁹ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to

conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Report and Order.

23. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Report and Order.

24. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which the Commission is aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to the most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.¹⁰ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, The Commission is unable at this time to estimate with greater

precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this Report and Order.

25. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which the Commission is aware appears to be the data collected annually in connection with the TRS Worksheet. According to the most recent data, 130 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules adopted in this Report and Order.

26. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which the Commission is aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to the most recent data, 57 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules adopted in this Report and Order.

⁸ United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (1992 Census).

⁹ 15 U.S.C. 632(a)(1).

¹⁰ Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

27. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which the Commission is aware appears to be the data collected annually in connection with the TRS Worksheet. According to the most recent data, 25 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 25 small entity operator service providers that may be affected by the decisions and rules adopted in this Report and Order.

28. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons.¹¹ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this Report and Order.

29. *Cellular Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which the Commission is aware appears to be the data collected annually in connection with the TRS Worksheet. According to the most recent data, 792 companies reported that they are engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 792 small entity cellular service carriers that might be affected by the actions and rules adopted in this Report and Order.

30. *Mobile Service Carriers.* Neither the Commission or the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which the Commission is aware appears to be the data collected annually in connection with the TRS Worksheet. According to the most recent data, 138 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, the Commission estimates that there are fewer than 138 small entity mobile service carriers that may be affected by the decision and rules adopted in this Report and Order.

31. *Broadband Personal Communications Service.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for

Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

32. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this Report and Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. The Commission assumes, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this Report and Order.

33. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, the Commission concludes that the number of geographic area SMR licensees affected

¹¹ 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

by the rule adopted in this Report and Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions adopted in this Report and Order.

34. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which the Commission is aware appears to be the data collected annually in connection with the TRS. According to the most recent data, 260 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this Report and Order.

35. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which the Commission is aware appears to be the data collected annually with the TRS Worksheet. According to the most recent data, 271 companies

reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 271 small entity pay telephone operators that may be affected by the decisions and rules adopted in this Report and Order.

36. *Cable Services or Systems.* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.¹² This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,788 such cable and other pay television services and 1,439 had less than \$11 million in revenues.¹³

37. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's Rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.¹⁴ Based on the most recent information, the Commission estimates that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules adopted in this Report and Order.

38. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed

\$250,000,000."¹⁵ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.¹⁶ Based on available data, the Commission finds that the number of cable operators serving 617,000 subscribers or less totals 1,450. The Commission does not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. The Commission further notes that recent industry estimates project that there will be a total of 65,000,000 subscribers, and the Commission has based our fee revenue estimates on that figure.

39. *Other Pay Services.* In the IRFA, the Commission included a category entitled "other pay services." Other pay services are also classified under SIC 4841, which include cable operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), satellite master antenna systems (SMATV), and subscription television services. The Commission received no comments regarding service providers in this category in response to either the IRFA or the NPRM at large. Accordingly, the Commission cannot determine at this time the number of service providers in this category that intend to offer services to the public as telecommunications carriers, and become subject to CALEA's requirements.

(4) Summary Analysis of the Projected Reporting, Recordkeeping and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities, Including Significant Alternatives Considered and Rejected.

40. In this section of the FRFA, the Commission analyzes the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this Report and Order. The Commission also

¹² 13 CFR 121.201, SIC Code 4841.

¹³ 1992 *Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

¹⁴ 47 CFR 76.901(e).

¹⁵ 47 U.S.C. 543(m)(2).

¹⁶ 47 CFR 76.1403(b).

describes the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected.

41. In the final regulations, the Commission affirms the proposal in the NPRM to establish regulations that are general in nature and provide as guidance, so that telecommunications carriers may utilize their existing policies and procedures to the greatest extent possible. In addition, the Commission eliminated all references to proposed rules and tentative conclusions relating to vicarious liability arising out of a telecommunications carrier's failure to accomplish either of CALEA section 105's two objectives.

42. In the final regulations, the Commission eliminated all regulations originally proposed pursuant to 47 U.S.C. 229(b)(1) that appeared to go beyond the scope of CALEA section 105, overlapped other proposed regulations, were unnecessarily cumbersome, or otherwise unnecessary. Accordingly, carriers must: (1) Appoint a senior officer or employee as point of contact responsible for affirmatively intervening to ensure that interception of communications or access to call-identifying information can be activated only in accordance with the appropriate legal authorization; (2) include a description of the job function of the appointed point of contact for law enforcement to reach on a daily, around-the-clock basis in their policies and procedures; (3) effectuate a requested interception promptly; (4) incorporate our interpretation of the phrase "appropriate authorization" in their policies and procedures; (5) state in their policies and procedures that carrier personnel must receive appropriate legal authorization, before enabling law enforcement officials to implement the interception of communications or access to call-identifying information; (6) require the appointed senior point of contact to be apprised of all relevant federal and state statutory provisions concerning the lawful interception of communications or access to call-identifying information; (7) report security compromises and unlawful interception of communications or access to call-identifying information to the appropriate law enforcement authorities within a reasonable length of time after discovery; (8) maintain a secure and accurate record of each interception of communications or access to call-identifying information, made with or without appropriate authorization, in the form of single certification; (9) maintain secure and records of call-

identifying information and unauthorized interceptions (including the content of the unauthorized interception) for ten years;¹⁷ (10) maintain secure and accurate records of the content of each authorized interception of communications for a period of time determined by them in accordance with the policies and procedures that they establish under section 229(b)(1) of the Communications Act and applicable state and federal statutes of limitation; (11) provide a detailed description of how long it will maintain its records of intercept content; and (12) file with the Commission, within 90 days of the effective date of these rules, the policies and procedures it uses to comply with the requirements of this subchapter, and thereafter, within 90 days of a carrier's merger or divestiture or a carrier's amendment of its existing policies and procedures.

43. The Commission eliminated the requirement of "designated employees," and the requirement for telecommunications carriers to provide updated lists of designated employees that included personal information about them, to law enforcement agencies. Instead, telecommunications carriers, as part of their policies and procedures, should only appoint a senior authorized officer or employee as a point of contact for law enforcement to reach on a daily, around-the-clock basis. Telecommunications carriers will include a description of the job function of the designated point of contact and a method to enable law enforcement authorities to contact the individual employed in this capacity in their policies and procedures.

44. The Commission eliminated the proposed regulation requiring a separate affidavit and a separate record for each surveillance. Instead, the final regulation requires that telecommunications carriers compile and maintain a single record of each intercepted communications or access to call-identifying information, certified by a carrier employee in charge of that electronic surveillance, that contains the following information: (1) The telephone number(s) and/or circuit identification number(s) involved; (2) the start date and time of the opening of the circuit for law enforcement; (3) the identity of the law enforcement officer presenting the authorization; (4) the name of the judge or prosecuting attorney who signed the authorization; (5) the type of intercepted communications or access to call-identifying information; (6) the name(s)

of the telecommunications carriers' personnel who are responsible for overseeing the interception of communications or access to call-identifying information and who are acting in accordance with the carriers' policies and procedures established under 47 U.S.C. 229(b)(1). This record shall be signed by the individual who is responsible for overseeing the interception of communications or access to call-identifying information and who is acting in accordance with the carriers' policies and procedures established under 47 U.S.C. 229(b)(1). To avoid duplicating the existing ten year record retention requirement for records of authorized interception content in 18 U.S.C. 2518(8)(a), the Commission allows telecommunications carriers to retain records of the content of authorized interceptions for a period of time that they find reasonably necessary. However, because 18 U.S.C. 2518(8)(a) does not encompass records of call-identifying information and records of unauthorized interceptions, the Commission requires carriers to maintain secure and records of call-identifying information and unauthorized interceptions (including the content of the unauthorized interception) for ten years.¹⁸

In the final regulations, the Commission did not affirm our proposal to provide a lessened reporting requirement for carriers that fell below the gross annual revenue threshold established in 47 CFR 32.9000 of the Commission's Rules. The Commission concludes that 47 U.S.C. 229(b)(3) requires all telecommunications carriers to submit their policies and procedures to the Commission established under 47 U.S.C. 229(b)(1) and (2). The statute makes no distinction between classes of telecommunications carriers for the purpose of lessening the regulatory burden for smaller carriers. Accordingly, the Commission's final regulations contain the requirement that all telecommunications carriers must file their systems security and integrity policies and procedures with the Commission, within 90 days of this Report and Order's effective date. The Commission notes, however, that since the proposed regulations have been drastically reduced, the burden imposed by the regulations adopted herein is also significantly reduced for all telecommunications carriers, including the smaller ones.

¹⁸ See Order on Reconsideration which revises this regulation, and which will be published shortly in the **Federal Register**.

¹⁷ See footnote 4 of this summary.

(5) Report to Congress

46. The Commission shall send a copy of this FRFA, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

Ordering Clauses

47. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), and 229 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 229, and section 105 of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 1004, the rules are adopted.

48. It is further ordered that the rules will become effective December 22, 1999 except for §§ 64.2103, 64.2104, and 64.2105, which contain information collection requirements that have not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

49. It is further ordered that the Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act, and as set forth above is adopted.

50. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

52. This Report and Order contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due November 22, 1999; OMB comments are due 90 days from date of publication of this Report and Order in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-0809.

Title: Communications Assistance for Law Enforcement Act, Report and Order.

Form No.: N/A.

Type of Review: Revision of existing collection.

Respondents: Business or other for profit.

Number of Respondents: 5000.

Estimated Time Per Response: 53 hours.

Total Annual Cost Burden: \$11,850,000.

Total Annual Burden: 265,000 hours.

Needs and Uses: The information submitted to the Commission by telecommunications Carriers will be used to determine whether or not the telecommunications carriers are in conformance with CALEA's requirements, and the information maintained by telecommunications carriers will be used by law enforcement officials to determine the accountability and accuracy of telecommunications carriers' compliance with lawful electronic surveillance orders.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is revised to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218-220, and 332 unless otherwise noted. Interpret or apply §§ 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201-204, 218, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Part 64 is amended to add Subpart V to read as follows:

Subpart V—Telecommunications Carrier Systems Security and Integrity Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

Sec.

64.2100 Purpose.

64.2101 Scope.

64.2102 Definitions.

64.2103 Policies and procedures for employee supervision and control.

64.2104 Maintaining secure and accurate records.

64.2105 Submission of policies and procedures and commission review.

64.2106 Penalties.

§ 64.2100 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act, Public Law 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains rules that require a telecommunications carrier to ensure that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with appropriate legal authorization, appropriate carrier authorization, and with the affirmative intervention of an individual officer or employee of the carrier acting in accordance with regulations prescribed by the Commission.

§ 64.2101 Scope.

The definitions included in this subchapter shall be used solely for the purpose of implementing CALEA requirements.

§ 64.2102 Definitions.

(a) *Appropriate legal authorization.* The term *appropriate legal authorization* means:

(1) A court order signed by a judge or magistrate authorizing or approving interception of wire or electronic communications; or

(2) Other authorization, pursuant to 18 U.S.C. 2518(7), or any other relevant federal or state statute.

(b) *Appropriate carrier authorization.* The term *appropriate carrier authorization* means the policies and procedures adopted by telecommunications carriers to supervise and control officers and employees authorized to assist law enforcement in conducting any interception of communications or access to call-identifying information.

(c) *Appropriate authorization.* The term *appropriate authorization* means both appropriate legal authorization and appropriate carrier authorization.

§ 64.2103 Policies and procedures for employee supervision and control.

A telecommunications carrier shall:

(a) Establish policies and procedures to ensure the supervision and control of its officers and employees;

(b) Appoint a senior officer or employee as a point of contact responsible for affirmatively intervening to ensure that interception of communications or access to call-identifying information can be activated only in accordance with appropriate legal authorization, and include, in its policies and procedures, a description of the job function of the appointed point of contact for law enforcement to reach on a seven days a week, 24 hours a day basis;

(c) Incorporate, in its policies and procedures, an interpretation of the phrase *appropriate authorization* that encompasses the definitions of *appropriate legal authorization* and *appropriate carrier authorization*, as stated above;

(d) State, in its policies and procedures, that carrier personnel must receive appropriate legal authorization and appropriate carrier authorization before enabling law enforcement officials and carrier personnel to implement the interception of communications or access to call-identifying information;

(e) Report to the affected law enforcement agencies, within a reasonable time upon discovery:

(1) Any act of compromise of a lawful interception of communications or access to call-identifying information to unauthorized persons or entities; and

(2) Any act of unlawful electronic surveillance that occurred on its premises.

(f) Include, in its policies and procedures, a detailed description of how long it will maintain its records of the content of an interception.

§ 64.2104 Maintaining secure and accurate records.

(a) A telecommunications carrier shall maintain a secure and accurate record of each interception of communications or access to call-identifying information, made with or without appropriate authorization, in the form of single certification.

(1) This certification must include, at a minimum, the following information:

(i) The telephone number(s) and/or circuit identification numbers involved;

(ii) The start date and time of the opening of the circuit for law enforcement;

(iii) The identity of the law enforcement officer presenting the authorization;

(iv) The name of the person signing the appropriate legal authorization;

(v) The type of interception of communications or access to call-identifying information (e.g., pen register, trap and trace, Title III, FISA); and

(vi) The name of the telecommunications carrier's personnel who is responsible for overseeing the interception of communication or access to call-identifying information and who is acting in accordance with the carrier's policies established under § 64.2103.

(2) This certification must be signed by the individual who is responsible for overseeing the interception of communications or access to call-identifying information and who is acting in accordance with the telecommunications carrier's policies established under § 64.2103. This individual will, by his/her signature, certify that the record is complete and accurate.

(3) This certification must be compiled either contemporaneously with, or within a reasonable period of time after the initiation of the interception of the communications or access to call-identifying information.

(4) A telecommunications carrier may satisfy the obligations of paragraph (a) of this section by requiring the individual who is responsible for overseeing the interception of communication or access to call-identifying information and who is acting in accordance with the carrier's policies established under § 64.2103 to sign the certification and append the appropriate legal authorization and any extensions that have been granted. This form of certification must at a minimum include all of the information listed in paragraph (a) of this section.

(b) A telecommunications carrier shall maintain secure and accurate records of:

(1) Call-identifying information and unauthorized interceptions (including the content of the unauthorized interception) for ten years;

(2) The content of each authorized interception of communications for a reasonable period of time as determined by the carrier.

(c) It is the telecommunications carrier's responsibility to ensure its records are complete and accurate.

(d) Violation of this rule is subject to the penalties of § 64.2106.

§ 64.2105 Submission of policies and procedures and commission review.

(a) Each telecommunications carrier shall file with the Commission the policies and procedures it uses to comply with the requirements of this subchapter. These policies and procedures shall be filed with the

Federal Communications Commission within 90 days of the effective date of these rules, and thereafter, within 90 days of a carrier's merger or divestiture or a carrier's amendment of its existing policies and procedures.

(b) The Commission shall review each telecommunications carrier's policies and procedures to determine whether they comply with the requirements of § 64.2103 and § 64.2104.

(1) If, upon review, the Commission determines that a telecommunications carrier's policies and procedures do not comply with the requirements established under § 64.2103 and § 64.2104, the telecommunications carrier shall modify its policies and procedures in accordance with an order released by the Commission.

(2) The Commission shall review and order modification of a telecommunications carrier's policies and procedures as may be necessary to insure compliance by telecommunications carriers with the requirements of the regulations prescribed under § 64.2103 and § 64.2104.

§ 64.2106 Penalties.

In the event of a telecommunications carrier's violation of § 64.2103 or § 64.2104 of this subchapter, the Commission shall enforce the penalties articulated in 47 U.S.C. 503(b) of the Communications Act of 1934 and 47 CFR 1.8.

[FR Doc. 99-24853 Filed 9-22-99; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA No. 99-1792; MM Docket No. 99-79; RM-9488]

Radio Broadcasting Services; Broadview, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a petition for rule making filed by Windy Valley Broadcasting requesting the allotment of Channel 290C3 at Broadview, Montana. See 64 FR 14419, March 25, 1999. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 23, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report