

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 20**

[CC Docket No. 94-102; FCC 00-405]

Wireless Radio Services; Compatibility With Enhanced 911 Emergency Calling Systems**AGENCY:** Federal Communications Commission.**ACTION:** Final rule; petitions for reconsideration.

SUMMARY: In this document the Commission denies two petitions for reconsideration of the Second Memorandum Opinion and Order in this proceeding, which modified the Commission's wireless Enhanced 911 (E911) rules to eliminate the prerequisite that carrier cost recovery mechanisms be in place before the wireless carrier's obligation to provide E911 service is triggered. The Commission take these actions to respond to these petitions for reconsideration.

DATES: Effective December 18, 2000.**FOR FURTHER INFORMATION CONTACT:** Barbara Reideler, 202-418-1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Memorandum Opinion and Order (Fifth MO&O) in CC Docket No. 94-102; FCC 00-405, adopted November 9, 2000, and released November 22, 2000. The complete text of this Fifth MO&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 Fifth Memorandum Opinion and Order

1. In this Fifth Memorandum Opinion and Order (Fifth MO&O), the Commission denies two petitions for reconsideration of the Second Memorandum Opinion and Order (see Second MO&O, 64 FR 72951, December 29, 1999) in this proceeding, in which the Commission modified its Enhanced 911 (E911) to eliminate the prerequisite that carrier cost recovery mechanisms be in place before the wireless carrier's obligation to provide E911 service is triggered. In January 2000, Rural Cellular Association (RCA) and CorrComm, L.L.C. filed petitions for reconsideration of that decision. In April 2000, RCA filed a petition for stay of the implementation of the amended

cost recovery rule, which became effective on April 27, 2000. Inasmuch as the Commission now denies the petitions for reconsideration of the Second MO&O, the petition for stay is denied as moot.

2. In denying the petitions for reconsideration the Commission affirms that: (1) Adequate notice and opportunity for comment was provided, (2) a complete record supports our conclusion that the rule resulted in a significant impediment to Phase I implementation that was inconsistent with our rules and the statute, and (3) we fully considered the impact of removing the carrier cost recovery requirement on all carriers, including rural carriers.

Final Regulatory Flexibility Analysis

3. The Commission has not prepared an additional Final Regulatory Flexibility Analysis (FRFA) of the possible economic impact on small entities of the Commission's decisions. See generally, the Regulatory Flexibility Act (RFA), 5 U.S.C. 604, because this Fifth MO&O does not promulgate or revise any rules, and the previous FRA analyses in this proceeding remain unchanged.

Authority

4. This action is taken pursuant to sections 1, 4(i), 201, 303, 309, and 332 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 201, 303, 309, and 332.

Ordering Clauses

5. The Petitions for Reconsideration filed by Corr Wireless Communications, L.L.C. (formerly CorrComm, L.L.C.) and Rural Cellular Association are denied. The Petition for Stay filed by Rural Cellular Association is denied as moot.

Federal Communications Commission.

Magalie Roman Salas,*Secretary.*

[FR Doc. 00-32134 Filed 12-15-00; 8:45 am]

BILLING CODE 6712-01-P**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 36 and 54**

[CC Docket No. 96-45; FCC 00-428]

Federal-State Joint Board on Universal Service**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: In this document, the Commission we adopt the recommendations of the Federal-State Joint Board on Universal Service (Joint Board) for phasing down the interim hold-harmless provision of the forward-looking high-cost universal service support mechanism for non-rural carriers. Specifically, the Commission adopts the Joint Board's recommendations that Long Term Support (LTS) be maintained under the current rules until the Commission considers appropriate reforms for the LTS program in connection with the pending proceedings for high-cost reform for rural carriers and/or interstate access charge reform for rate-of-return carriers and the balance of interim hold-harmless support, excluding LTS, be phased down through \$1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter, except that interim hold-harmless support transferred to a rural carrier when it acquires telephone exchanges from a non-rural carrier shall not be phased down following the transfer.

DATE: Effective December 18, 2000.**FOR FURTHER INFORMATION CONTACT:** William Scher, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Thirteenth Report and Order in CC Docket No. 96-45 released on December 8, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Thirteenth Report and Order, we adopt the recommendations of the Federal-State Joint Board on Universal Service (Joint Board) for phasing down the interim hold-harmless provision of the forward-looking high-cost universal service support mechanism for non-rural carriers. Specifically, we adopt measures to phase down interim hold-harmless support, excluding Long-Term Support (LTS), through \$1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter until there is no more interim hold-harmless support. For the reasons discussed, we believe that these measures will ensure a prompt, equitable phase-down of interim hold-harmless support without causing undue rate disruption. We conclude that several issues, such as appropriate

reforms for the LTS program, should be addressed in the context of our pending proceedings for rural high-cost reform and/or interstate access charge reform for rate-of-return carriers.

II. Phase Down of Interim Hold-Harmless Support

A. Long-Term Support

2. We adopt the Joint Board's recommendation regarding LTS. The forward-looking mechanism adopted in the *Ninth Report and Order*, 64 FR 67416, December 1, 1999, does not replace LTS for non-rural carriers, contrary to the Commission's originally anticipated outcome. Therefore, we agree with the Joint Board that LTS for non-rural carriers should be preserved until we have considered further reform of the LTS program. In addition, maintaining LTS for non-rural carriers is consistent with our objective to maintain the current support structure, as modified, for rural LTS recipients pending rural high-cost reform. Because LTS is geared primarily to the needs of small, rural carriers, we find that this determination should take place in the context of our related proceedings to reform the high-cost support mechanism for rural carriers and the interstate access charge system for rate-of-return carriers. We will examine these matters in the near future.

B. High-Cost Loop Support for Non-Rural Carriers Under Part 36 of the Commission's Rules

3. We adopt the Joint Board's recommendation that interim hold-harmless support, excluding LTS, be phased down beginning January 1, 2001, through annual \$1.00 reductions in each carrier's average monthly, per-line support until this support is eliminated. This approach will promptly phase out interim hold-harmless support for the majority of carriers currently receiving less than \$1.00 per-line/per-month, without reducing any carrier's average monthly, per-line support by more than \$1.00 per year. Thus, there will be no significant, sudden reductions in per-line support to an individual study area. We agree with the Joint Board that this approach is a reasonable means of ensuring a prompt, equitable phase-down of interim hold-harmless support without causing undue rate disruption, consistent with the objectives we announced in the *Ninth Report and Order*.

4. We also agree with the Joint Board that the phase-down schedule should be reexamined in conjunction with our review of the forward-looking mechanism, which is to be completed

by January 1, 2003. At that time, Puerto Rico Telephone Company is likely to be the only carrier still receiving interim hold-harmless support, and more information will be available on the impact of the phase-down in Puerto Rico.

a. Mechanics of Phase-Down

5. To ensure that the phase-down conforms with the quarterly schedule on which interim hold-harmless support is calculated, the Joint Board recommended that the applicable annual reductions be subtracted from the interim hold-harmless support that a carrier otherwise would be eligible to receive on an ongoing, quarterly basis. We adopt this recommendation.

6. We also conclude that the targeting provisions of the *Ninth Report and Order* should govern the distribution of phased-down support. Although non-rural carriers receive interim hold-harmless support based on embedded costs averaged over their entire study areas, the support is targeted for competitive purposes to their highest-cost exchanges based on forward-looking economic costs. The Joint Board did not address the issue of whether phased-down support should be targeted to individual exchanges, except in connection with transferred exchanges. We find, however, that targeting phased-down interim hold-harmless support to a carrier's highest-cost exchanges is consistent both with the Joint Board's recommendations and with the *Ninth Report and Order*.

b. Calculation of High-Cost Loop Support for Rural Carriers

7. We adopt the Joint Board's recommendation that the "interim cap" on high-cost loop support for rural carriers be calculated as if phased-down interim hold-harmless support were being distributed to non-rural carriers, pending reform of the high-cost support mechanism for rural carriers. Under the current rules, universal service support for all carriers under Part 36 is restricted by a cap that limits the total increase in support each year to the annual growth in nationwide loops. To avoid smaller annual increases in the support available to rural carriers as a result of the shift to forward-looking support for non-rural carriers, we directed in the *Ninth Report and Order* that the cap be calculated as if all carriers continue to participate in the preexisting Part 36 high-cost support mechanism. Subtracting phased-down support amounts from calculation of the cap likewise could result in smaller annual cap increases, because the prior year support level used to calculate the cap

includes the high-cost loop support for non-rural carriers under Part 36 that will be phased down as a result of the approach we adopt herein. Accordingly, we agree with the Joint Board that an interim "placeholder" measure is warranted to avoid significant and immediate changes in high-cost support for rural carriers as a result of the phase-down. In accordance with the Joint Board's recommendations, we also conclude that phased-down support for non-rural carriers (support calculated as a "placeholder") should not be collected or distributed to other carriers. We note that we expect this placeholder to remain in effect for a limited time, as we are committed to moving forward expeditiously on high-cost reform for rural carriers.

c. Transferred Interim Hold-Harmless Support

8. We are mindful of the Joint Board's concerns regarding the operation of § 54.305 of the Commission's rules. As the Joint Board recognized, however, the rule serves the important purpose of preventing carriers receiving support based on the size of their study areas and embedded costs from "placing unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges[.]" Section 54.305 was adopted as a temporary measure to be utilized during our transition to universal service support mechanisms that provide support to all carriers based on the forward-looking economic costs of operating a given exchange. The Joint Board is currently considering reform of the rural high-cost support mechanism, including the operation of § 54.305 for rural carriers. We believe that the rural high-cost reform proceeding is the most appropriate context in which to reexamine the operation of § 54.305 with regard to transfers involving rural carriers.

9. We therefore adopt the Joint Board's recommendation not to phase down interim hold-harmless support for eligible exchanges transferred to rural carriers until we reexamine § 54.305 or until rural high-cost reform is complete.

10. We also adopt the Joint Board's recommendation that interim hold-harmless support for exchanges transferred to non-rural carriers be phased down over the same time period as the seller's support would have been phased down. We agree with the Joint Board that this approach will ensure a prompt and equitable phase-down of transferred interim hold-harmless support, and discourage carriers from transferring exchanges to delay or avoid the phase-down of interim hold-

harmless support. In addition, we adopt the recommendation that targeted support for exchanges transferred to non-rural carriers be phased down by an equal percentage for each year of the phase-down period, on an exchange-by-exchange basis. This approach will be administratively simple and predictable for acquiring non-rural carriers.

III. Procedural Matters

A. Regulatory Flexibility Act Certifications—Final and Initial

11. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of proposed policies and rules, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines a small telecommunications entity in Standard Industrial Classification Code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

12. We conclude that a FRFA is not required here. The foregoing Thirteenth Report and Order adopts a final rule. The rules adopted affect the amount of high-cost support provided to non-rural carriers. Non-rural carriers generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. Thus, the final rules adopted here do not affect a substantial number of small entities. Therefore, we certify, pursuant to section 605(b) of the RFA, that the final rule adopted in the Thirteenth Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Thirteenth Report and Order and of this certification to the Chief Counsel for Advocacy of the SBA. In addition, this

certification will be published in the **Federal Register**. The Commission will send a copy of this Thirteenth Report and Order, including a copy of this certification, in a report to Congress pursuant to the SBREFA.

B. Effective Date of Final Rules

13. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the **Federal Register**. In this Thirteenth Report and Order we conclude that the phase-down of interim hold-harmless support, excluding LTS, will be implemented beginning January 1, 2001. Thus, the amendments must become effective by January 1, 2001. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the required January 1, 2001 implementation date. This implementation date is important because January 1, 2001 is the beginning of a new funding year, and interim hold-harmless support is a transitional funding mechanism that increases the size of the federal high-cost fund and should be phased down as rapidly as possible without causing undue disruption to consumer rates in high-cost areas. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

C. Paperwork Reduction Act

14. The instant Report and Order contains no information collections.

IV. Ordering Clauses

21. Pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, this Thirteenth Report and Order is adopted.

22. Part 36 of the Commission's rules is amended as set forth, effective December 18, 2000.

23. Part 54 of the Commission's rules is amended as set forth, effective December 18, 2000.

24. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the Thirteenth Report and Order, including the Regulatory Flexibility Act Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36 and 54 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

Subpart F—Universal Service Fund

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 254, 403 and 410.

2. In § 36.601, add the following sentence at the end of paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) * * *

Support amounts calculated pursuant to this subpart F but not received due to the phase down of interim hold-harmless support or the receipt of forward-looking support pursuant to § 54.311 of this chapter shall not be redistributed to other carriers.

* * * * *

PART 54—UNIVERSAL SERVICE

Subpart D—Universal Service Support for High Cost Areas

3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

4. In § 54.311, paragraph (d) is added to read as follows:

§ 54.311 Interim hold-harmless support for non-rural carriers.

* * * * *

(d) *Phase down of interim hold-harmless support.* Beginning January 1, 2001, the interim hold-harmless support for which a non-rural incumbent local exchange carrier qualifies under paragraph (a) of this section, excluding Long Term Support, shall be phased down through annual \$1.00 reductions

in average monthly, per-line support. Applicable annual reductions shall be subtracted from the total amount of interim hold-harmless support that a non-rural incumbent local exchange carrier otherwise would be eligible to receive on an ongoing, quarterly basis. The provisions of paragraph (b) of this section shall apply to the total amount of phased-down interim hold-harmless support provided to each non-rural incumbent local exchange carrier.

(1) Interim hold-harmless support for a wire center transferred to a carrier that does not meet the definition of rural telephone company in § 51.5 of this chapter shall be phased down following the transfer over the same time period as the seller's support would have been phased down, by an equal percentage for each year of the phase-down period.

(2) Interim hold-harmless support for a wire center transferred to a carrier that meets the definition of rural telephone company in § 51.5 of this chapter shall remain frozen at the per-line support level as of the sale date.

[FR Doc. 00-32071 Filed 12-15-00; 8:45 am]

BILLING CODE 6712-01-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014-0137-02; I.D. 121200H]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for North Carolina

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of North Carolina has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in North Carolina for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in North Carolina.

DATES: Effective 0001 hours, December 17, 2000, through 2400 hours, December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg) (65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in North Carolina is 27.44584 percent, or 3,049,560 lb (1,383,257 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to

publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of North Carolina has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 17, 2000, further landings of summer flounder in North Carolina by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 17, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in North Carolina for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 12, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00-32136 Filed 12-13-00; 3:26 pm]

BILLING CODE: 3510-22 -S