

operation of the hybrid system, with the frequency hopping operation turned off, shall comply with the power density requirements of paragraph (d) of this section.

(f) Frequency hopping systems are not required to employ all available hopping channels during each transmission. However, the system, consisting of both the transmitter and the receiver, must be designed to comply with all of the regulations in this section should the transmitter be presented with a continuous data (or information) stream. In addition, a system employing short transmission bursts must comply with the definition of a frequency hopping system and must distribute its transmissions over the minimum number of hopping channels specified in this section.

(g) The incorporation of intelligence within a frequency hopping system that permits the system to recognize other users within the spectrum band so that it individually and independently chooses and adapts its hops to avoid hopping on occupied channels is permitted. The coordination of frequency hopping systems in any other manner for the express purpose of avoiding the simultaneous occupancy of individual hopping frequencies by multiple transmitters is not permitted.

* * * * *

[FR Doc. 01-14526 Filed 6-11-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 24

[WT Docket No. 01-108; FCC 01-153]

Year 2000 Biennial Regulatory Review To Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission, pursuant to its year 2000 Biennial Review of regulations, proposes to modify or eliminate regulations that have become outdated as a result of technological change, increased competition in the Commercial Mobile Radio Services (CMRS), supervening changes to related Commission rules, or a combination of these factors. The Commission focuses its review on the cellular rules, although it also considers modification or elimination of certain other rules that

affect all Public Mobile Services. The NPRM specifically addresses the following rules: cellular service requirements and limitations; cellular technical rules, including the analog cellular compatibility standard, the electronic serial number rule, channelization requirements, modulation requirements and in-band emissions limitations, the wave polarization requirement, assignment of system identification numbers, determination of cellular geographic service area, and service commencement and construction periods; the incidental services rule; and the cellular anti-trafficking rules.

DATES: Comments are due on or before July 2, 2001; reply comments are due on or before August 1, 2001. Written comments by the public on the proposed information collections are due on or before July 2, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the modified information collection(s) on or before August 13, 2001.

ADDRESSES: Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW.; TW-A325; Washington, DC 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lauren Van Wazer at (202) 418-0030 (Wireless Telecommunications Bureau). For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Notice of Proposed Rulemaking ("NPRM") in WT Docket No. 01-108, FCC 01-153, adopted May 3, 2001 and released May 17, 2001. The complete text of the document is

available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 445 12th Street, SW., CY-B400, Washington, DC 20554. The document is also available via the Internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc01153.pdf>. This Notice of Proposed Rulemaking contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

I. Paperwork Reduction Act

1. This NPRM contains proposed revisions to existing information collections. 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 collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this Notice; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed modifications to existing information collections are 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.

2. The information collection requirements of 47 CFR 22.901, which is contained in OMB 3060-0508 (66 FR 109), is being proposed for elimination. Further, the Commission proposes to revise the information collection associated with 47 CFR 22.937, which is also contained in OMB 3060-0508. By revising 47 CFR 22.937 to eliminate the financial demonstration requirement for all cellular licensees who are not competing with cellular renewal licensees, the Commission thus eliminates the information collection

requirement(s) associated with this rule section.

OMB Control No.: 3060-0508.

Title: Rewrite and Update of Part 22.

Form No.: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 166,732.

Frequency of Response: On occasion, quarterly, semi-annually, annually.

Total Annual Burden: 250,415 hours.

Total Annual Cost: 0.

Needs and Uses: Part 22 contains the technical and legal requirements for radio stations operating in the Public Mobile Services. Generally the collected information is used to determine legal, technical and/or financial qualifications of the respondents.

II. Introduction

3. This Notice of Proposed Rulemaking initiates a proceeding as part of the Commission's year 2000 Biennial Review of regulations pursuant to Section 11 of the Communications Act of 1934, as amended, 47 U.S.C. 161 (Communications Act). Section 11 requires the Commission to review all of its regulations applicable to providers of telecommunications services, and to determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service and whether such regulations should be deleted or modified. As a result, the NPRM sets forth and seeks comment on specific proposed changes to several CMRS service rules.

III. Background

4. In connection with the Commission's year 2000 Biennial Review, in CC Docket No. 00-175, FCC 00-456 (rel. Jan. 17, 2001) (not published in the **Federal Register**), the Commission staff prepared a comprehensive review of regulations that affect telecommunications service providers. The Commission subsequently issued a report endorsing recommendations made by staff as a result of that review. In the staff report, the staff notes that many of the part 22 rules regulating cellular telephone service date back to the inception of the service in the early 1980s, when the two cellular carriers in each market were the only providers of mobile telephony, thus creating a "duopoly" market for this service. The staff report recommends initiating a rulemaking to review the cellular rules and consider which of these rules are obsolete as a result of the technological advances and

growth of competition that have occurred in mobile telephony since the rules were adopted. The report also recommends review of certain other Part 22 rules on the same basis. This NPRM addresses many of the issues identified in the staff Biennial Review report.

IV. Discussion

5. This NPRM sets forth and seeks comment on specific proposed changes to several service rules. The following specific rules and issues are addressed in the item: (1) Cellular service requirements and limitations (§ 22.901); (2) Advanced Mobile Phone Service (AMPS) analog cellular compatibility standard (§§ 22.901 and 22.933); (3) manufacturing and design requirements governing the security of electronic serial numbers (ESNs) in cellular telephones (§ 22.919); (4) cellular channelization rules (§ 22.905); (5) cellular analog modulation requirement and out-of-band emissions limitations (§§ 22.915 and 22.917), as well as out-of-band emissions rules for broadband Personal Communications Service (PCS); (6) cellular wave polarization requirement (§ 22.367(a)(4)); (7) rule governing cellular System Identification Numbers (SIDs) (§ 22.941); (8) alternative methods for determining a Cellular Geographic Service Area (CGSA) (§ 22.911); (9) service commencement and construction period rules (§ 22.946); (10) incidental services rules (§ 22.323); and (11) cellular anti-trafficking rules (§§ 22.937, 22.943, and 22.945). Each of these issues will be discussed briefly in turn.

6. Cellular Service Requirements and Limitations (§ 22.901). Although this rule has been amended several times since its adoption, the NPRM notes that it appears outdated in several respects. First, the rule is drafted as though the principal technology employed is analog, which is no longer true. The NPRM proposes revising the rule to avoid characterizing any particular technology as either primary or alternative. Second, the NPRM seeks comment on the various types of service area information provided by non-cellular CMRS carriers, as well as whether the requirement for cellular carriers to provide reliable service area information is still necessary in light of the current level of competition for CMRS services. Also, the NPRM seeks comments on modifying or eliminating other provisions of the rule.

7. Advanced Mobile Phone Service (AMPS) analog cellular compatibility standard (§ 22.901 and 22.933). Currently, cellular carriers are required to provide analog service in accord with the Advanced Mobile Phone Service

(AMPS) specifications referenced and incorporated in the April 1981 version of Office of Engineering and Technology (OET) Bulletin No. 53. The NPRM seeks comment on whether the Commission should update or eliminate this standard in light of technological and market developments since the adoption of the requirement. In particular, the NPRM seeks comment on the possible impact of eliminating this rule on certain existing programs and services, and notes that the Commission is reluctant to eliminate the standard if doing so will significantly impair the access of users of analog-dependent technology to wireless telecommunications services.

8. Electronic Serial Number (ESN) rule (§ 22.919). Section 22.919 sets forth various design requirements for manufacturers of cellular telephones, which are not applicable to other CMRS services. These requirements were adopted to address the problem of cellular cloning fraud, which was prevalent in the early 1990s. Given the developments since the Commission promulgated the ESN requirements, which include enactment of a statute to address such fraud directly and changes in the technologies available to prevent fraud, the NPRM notes that many of the original reasons for establishing the ESN requirements may no longer be compelling and proposes removing § 22.919 from the Commission's rules.

9. Channelization Requirements (§ 22.905). The NPRM tentatively concludes that the channelization plan in the rules is no longer necessary because analog nationwide compatibility has already been established and the principal digital technologies are exempt from this plan.

10. Modulation Requirements and In-Band Emissions Limitations (§ 22.915). Section 22.915 of the Commission's rules requires that cellular systems be capable of providing service using the modulation types described in the existing analog compatibility specification. Since the adoption of this rule, the Commission has permitted licensees more flexibility in choosing the type of technology with which to operate. The NPRM seeks comment on how the Commission can define an out-of-band emissions limit to provide effective protection from interference while allowing licensees flexibility to establish a different limit where appropriate.

11. Wave Polarization Requirement (§ 22.367(a)(4)). The Commission's current rules require vertical wave polarization. In the NPRM, the Commission tentatively concludes that it should relax this requirement.

12. Assignment of System Identification Numbers (SIDs) (§ 22.941). Section 22.941 of the Commission's rules sets forth the procedure by which the Commission assigns system identification numbers (SIDs) in the Cellular Radiotelephone Service. The Commission proposes generally eliminating SIDs as a term of cellular licenses, and also seeks comment on proposals for SID coordination functions to be carried out by an industry organization, rather than the Commission.

13. Determination of Cellular Geographic Service Area (CGSA) (§ 22.911(a)). Section 22.911(a) of the Commission's rules sets forth a standardized method for determining the CGSA of a cellular system using a specific mathematical formula. Section 22.911(b) sets forth alternative methods that may be used if a licensee believes that the standard method produces a CGSA that substantially differs from the actual coverage of its system. The NPRM proposes modifications in this rule to clarify the acceptable methods for determining the CGSA.

14. Service Commencement and Construction Periods (§ 22.946). This rule sets forth the timing requirements relating to the deployment of new cellular systems. The NPRM seeks comment on correcting an oversight made during a recent change of the rule, as well as updating the rule in light of the level of competition for CMRS services.

15. Incidental Services Rule (§ 22.323). Section 22.323 authorizes carriers operating in the Public Mobile Radio Services to provide other communications services incidental to the primary public mobile services, provided certain conditions are met. The NPRM seeks comment on eliminating or modifying this rule to provide carriers more flexibility in providing wireless services to meet customer demands.

16. Cellular Anti-Trafficking Rules (§§ 22.937, 22.943, and 22.945). These rules were originally adopted to prevent speculation and trafficking in cellular licenses at a time when cellular licenses were awarded through a lottery process. Given that licenses are now principally awarded through the auction process, which in effect offers safeguards against speculative purchases of authorizations, the NPRM seeks comment on whether the Commission should eliminate or substantially modify these rules.

V. Filing Procedures

17. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 2, 2001, and

reply comments on or before August 1, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

18. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

19. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW-A325, Washington, DC 20554.

20. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW., CY-B400, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

VI. Initial Regulatory Flexibility Analysis

21. As required by the Regulatory Flexibility Act (RFA),¹ the Commission

has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this NPRM, WT Docket No. 01-108. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the Notice provided in paragraph 76 of the NPRM. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.³

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

22. As part of our 2000 biennial regulatory review pursuant to Section 11 of the Communications Act of 1934, as amended (Communications Act), we are required to review all of our regulations that are applicable to providers of telecommunications service to determine whether any rule is no longer in the public interest. More specifically, in the *Biennial Review Report*, the Commission indicated that it would initiate a rulemaking proceeding to identify and address potentially outdated technical rules governing cellular service, based on the staff's recommendations that were included in the *Biennial Review Staff Report*.⁴ The staff report notes that many of the Part 22 technical rules regulating cellular telephone service date back to the inception of the service in the early 1980s and, given the significant technological changes and growth in competition for cellular services since that time, the rules may be obsolete. In particular, the NPRM seeks comment on elimination of the cellular analog compatibility standard and the Electronic Serial Number (ESN) rule, as well as modifying several other technical rules.⁵ In the same vein, some of the cellular anti-trafficking rules may be outdated because they were adopted during a period when the Commission

104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Enforcement Fairness Act of 1996 (SBREFA).

² See 5 U.S.C. 603(a).

³ See *id.*

⁴ Biennial Regulatory Review, CC Docket No. 00-175, Report FCC 00-456 (adopted December 29, 2000; released January 17, 2001) (*Biennial Review Report*); Biennial Regulatory Review 2000 Updated Staff Report, released January 17, 2001 (*Biennial Review Staff Report*).

⁵ The specific technical rules include: §§ 22.367(a)(4), 22.901, 22.905, 22.911, 22.915, 22.917, 22.919, 22.933, 22.941, and 22.946 of the Commission's rules.

¹ See 5 U.S.C. 603. The RFA, see U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law

resolved mutually exclusive applications for initial cellular services through lottery, rather than the current system of resolving such mutually exclusive applications through competitive bidding.⁶ We also take this opportunity to reevaluate certain other Part 22 rules that apply both to cellular and to other CMRS, specifically § 22.323, which imposes conditions on the provision of “incidental” services by Public Mobile Services providers.⁷

B. Certification Regarding Broadband PCS

23. With regard to broadband Personal Communications Service (PCS), we certify, pursuant to the RFA, that the proposed changes to § 24.238, emissions limitations, would not have “a significant economic impact on a substantial number” of small broadband PCS providers.⁸ The proposed changes to this rule would reduce the compliance burden on these entities by allowing these entities greater flexibility to establish out-of-band emissions limits to be used at specified band edges.⁹ Specifically, the proposed § 24.238(c) would allow parties to establish alternative out-of-band emissions limits pursuant to private contractual arrangements—a practice that is not permitted by the current rule. This proposal would effectively codify and expand upon a waiver that the Wireless Telecommunications Bureau (Bureau) granted for all broadband PCS licensees in August 2000.¹⁰ In that waiver grant, the Bureau waived § 24.238 “insofar as it limits out-of-band emissions on: (1) Adjacent contiguous frequency blocks that are separately assigned to the same PCS licensees, and (2) adjacent contiguous frequency blocks that are assigned to different PCS licensees who have entered into an agreement(s) concerning interference protection to the adjacent spectrum.”¹¹ The proposed rule change would allow somewhat more flexibility to licensees because it would not limit a licensee’s ability to contract for alternative emissions limitations to only those frequency blocks that are both adjacent and contiguous. Because our proposed change would effectively codify a waiver that permits greater flexibility for

broadband PCS licensees, the proposed changes to § 24.238 would not have a significant economic impact on broadband PCS providers.

C. Legal Basis

24. The potential actions on which comment is sought in this NPRM would be authorized under Sections 1, 4(i), 11, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, and 303(r).

D. Description and Estimate of the Small Entities Subject to the Rules

25. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the Agency certifies that “the rule will not, if promulgated, have a significant impact on a substantial number of small entities.”¹² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁴ 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 SBA.¹⁵ This IRFA describes and estimates the number of small-entity licensees and manufacturers that may be affected if the proposals in this NPRM are adopted.

26. This NPRM could result in rule changes that, if adopted, would affect small businesses that currently are or may become Cellular Radiotelephone Service providers that are regulated under subpart H of part 22 of the Commission’s rules. In addition, the proposed changes to § 22.323 of the Commission’s rules would, if adopted, affect service providers that are regulated under any provisions of part 22 of the Commission’s rules. These include, in addition to Cellular Radiotelephone Service providers, providers of Paging and Radiotelephone (Common Carrier Paging), Air-Ground

Radiotelephone, Offshore Radiotelephone, and Rural Radiotelephone services. In addition, pursuant to § 90.493(b) of the Commission’s rules, paging licensees on exclusive channels in the 929–930 MHz bands are subject to the licensing, construction, and operation rules set forth in part 22.¹⁶ As this rulemaking proceeding applies to multiple services, we will analyze the number of small entities affected on a service-by-service basis. In addition to service providers, some of the proposed rule changes may also affect manufacturers of cellular telecommunications equipment. We will include a separate discussion regarding the number of small cellular equipment manufacturing entities that are potentially affected by the proposed rule changes.

27. *Cellular Radiotelephone Service.* Neither the Commission nor the SBA has 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 (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹⁷ According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms, which operated during 1992, had 1,000 or more employees.¹⁸ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA’s definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or PCS, which are placed together in the data.¹⁹ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA’s definition. Consequently, we estimate that there are 808 or fewer small cellular service carriers that may be affected by these proposals, if adopted.

⁶ The specific cellular anti-trafficking rules include: §§ 22.937, 22.943, and 22.945 of the Commission’s rules.

⁷ See 47 CFR 22.323.

⁸ See 5 U.S.C. 605.

⁹ See para. 42, *supra*.

¹⁰ Omnipoint Request for Broadband Declaratory Ruling or Waiver Concerning PCS Emissions Limits Rule Section 24.238, DA 00–1767, 15 FCC Rcd. 13,422 (2000).

¹¹ *Id.* a ¶ 1.

¹² U.S.C. 603(b)(3).

¹³ *Id.* at 601(6).

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

¹⁵ Small Business Act, 15 U.S.C. 632 (1996).

¹⁶ See 47 CFR 90.493(b).

¹⁷ 13 CFR 121.201, SIC code 4812.

¹⁸ 1992 Census, Series UC92–S–1, at Table 5, SIC code 4812.

¹⁹ See *Telecommunications Industry Revenues: 1999*, Industry Analysis Division, Common Carrier Bureau (Sept. 2000).

28. *Paging.* The Commission has adopted, and the SBA has approved, a two-tier definition of small businesses in the context of auctioning licenses in the paging services. Under this definition, a small business is 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. The Commission has estimated that as of January 1998, there were more than 600 paging companies in the United States.²⁰ We do not have data specifying the number of these carriers that are not independently owned and operated or meet the small business thresholds set forth above, or the number of these carriers that are regulated under part 22 of the Commission's rules, and thus are unable at this time to estimate with precision the number of affected paging carriers that would qualify as small business concerns under our definition. However, we estimate that the majority of existing paging providers qualify as small entities under our definition. Consequently, we estimate that there are up to approximately 600 currently licensed small paging carriers that may be affected by the rule changes proposed in the NPRM. In addition, high bids were placed at auction in March 2000 for 985 new geographic area paging licenses, and an additional 15,645 geographic area paging licenses are expected to be awarded following future auctions. In the March 2000 auction, high bids were placed on paging licenses by 57 entities that qualify as small businesses under the Commission's definition. Licenses have been granted to 56 of these entities, and the application of the other entity remains pending. Thus, in addition to existing licensees, should the Commission adopt the rule changes proposed in the NPRM either 57 or 58 license winners in the recent auction would be affected small entities, and up to 15,645 winners of paging licenses in future auctions would be affected small entities.

29. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service.²¹ Accordingly,

we 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.

30. *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 has not adopted a definition of small business specific to the Offshore Radiotelephone Service. Accordingly, we use the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. 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.

31. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.²² A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).²³ We therefore use the SBA definition applicable to radiotelephone companies; i.e., an entity employing no more than 1,500 persons. There are approximately 1000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

32. *Cellular Equipment Manufacturers.* Some of the proposed actions in the NPRM will also affect manufacturers of cellular equipment. The Commission does not know how many cellular equipment manufacturers are in the current market. The 1994 County Business Patterns Report of the Bureau of the Census estimates that there are 920 companies that make communications subscriber equipment. This category includes not only cellular equipment manufacturers, but television and AM/FM radio manufacturers as well. Thus, the number of cellular equipment manufacturers is

considerably lower than 920. Under SBA regulations, a "communications equipment manufacturer," which includes not only U.S. cellular equipment manufacturers but also firms that manufacture radio and television broadcasting and other communications equipment, must have a total of 750 or fewer employees in order to qualify as a small business concern.²⁴ Census Bureau data from 1992 indicate that at that time there were an estimated 858 such U.S. manufacturers and that 778 (91%) of these firms had 750 or fewer employees and would therefore be classified as small entities.²⁵ Using our current estimate of cellular equipment manufacturers and the previous percentage estimate of small entities, we estimate that our current action may affect approximately 837 small cellular equipment manufacturers.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

34. This NPRM neither proposes nor anticipates any additional reporting, recordkeeping or other compliance measures.

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

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁶

36. As stated earlier, several of the Commission's technical and anti-trafficking cellular rules may be outdated. Therefore, modifying or eliminating these rules should decrease the costs associated with regulatory compliance for cellular service providers, provide additional flexibility in manufacturing cellular equipment, and also enhance the market demand for

²⁴ 13 CFR 121.201, Standard Industrial Classification (SIC) code 3663.

²⁵ U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC code 3663 (estimate created by the Census Bureau under contract to the Office of Advocacy, SBA).

²⁶ See 5 U.S.C. 603.

²⁰ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Third Report, 13 FCC Rcd 19746, 19792 (1998).

²¹ Air-ground radiotelephone service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

²² Rural Radiotelephone Service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

²³ BETRS is defined in §§ 22.757 and 22.729 of the Commission's rules, 47 CFR 22.757 and 22.729.

some products. Also, amending or deleting the incidental services rules may allow licensees in the part 22 services greater flexibility in the types of services they offer. In the NPRM, the Commission has set forth various options it is considering for each rule, from modifying rules to eliminating them altogether. As discussed in the NPRM, the effect of any rule change on the regulatory burden of both licensees and equipment manufacturers will be a significant criterion in determining appropriate Commission action.

37. We note that the entire intent underlying our actions here is to lessen the levels of regulation, consistent with our mandate for undertaking biennial reviews. We have therefore described, *supra*, various alternatives to lessen the regulatory burden on carriers and equipment manufacturers, including small entities. We seek comment on any additional appropriate alternatives.

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

38. None.

VII. Ordering Clauses

39. Authority for the issuance of this NPRM is contained in Sections 154, 222, 303, 309 and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 222, 303, 309 and 332.

40. The Commission's Consumer Information Bureau, Reference Information Center, *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 22

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Rural areas.

47 CFR Part 24

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend title 47, part 22 of the Code of Federal Regulations, as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Section 22.323 is revised to read as follows:

§ 22.323 Incidental communication services.

Carriers authorized to operate stations in the Public Mobile Services may use these stations to provide other telecommunications services incidental to the primary public mobile service(s) for which the authorizations were issued.

3. Section 22.367 is amended by removing and reserving paragraph (a)(4) and by revising paragraph (d), to read as follows:

§ 22.367 Wave polarization.

* * * * *

(a) * * *

(4) [Reserved]

* * * * *

(d) *Any polarization.* Base, mobile and auxiliary test transmitters in the Cellular Radiotelephone Service are not limited as to wave polarization. Public Mobile Service stations transmitting on channels higher than 960 MHz are not limited as to wave polarization.

§ 22.377 [Amended]

4. Section 22.377 is amended by removing paragraph (c).

5. Section 22.901 is revised to read as follows:

§ 22.901 Cellular service requirements and limitations.

The licensee of each cellular system is responsible for ensuring that its cellular system operates in compliance with this section. Each cellular system must provide either mobile service, fixed service, or a combination of mobile and fixed service, subject to the requirements, limitations and exceptions in this section. Mobile service provided may be of any type, including two-way radiotelephone, dispatch, one-way or two-way paging, and personal communications services (as defined in part 24 of this chapter). Fixed service is considered to be primary service, as is mobile service. When both mobile and fixed service are provided, they are considered to be co-primary services. In providing cellular services, each cellular system may incorporate any technology that meets all applicable technical requirements in this part.

6. Section 22.905 is revised to read as follows:

§ 22.905 Frequency bands.

The following frequency bands are allocated for assignment to service providers in the Cellular Radiotelephone Service.

(a) Channel Block A: 869–880 MHz paired with 824–835 MHz, and 890–891.5 MHz paired with 845–846.5 MHz.

(b) Channel Block B: 880–890 MHz paired with 835–845 MHz, and 891.5–894 MHz paired with 846.5–849 MHz.

7. Section 22.911 is amended by revising paragraphs (b)(1) and (b)(3), to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(b) * * *

(1) The alternative CGSA determination must define the CGSA in terms of distances from the cell sites to the 32 dBµV/m contour along the eight cardinal radials, with points in other azimuthal directions determined by the method given in paragraph (a)(6) of this section. The distances used for the cardinal radials must be representative of the coverage within the 45° sectors, as depicted by the alternative CGSA determination.

* * * * *

(3) The provision for alternative CGSA determinations was made in recognition that the formula in paragraph (a)(1) of this section is a general model that provides a reasonable approximation of coverage in most land areas, but may substantially under-predict or over-predict coverage in specific areas with unusual terrain roughness or features, and may be inapplicable for certain purposes, e.g., cells with a coverage radius of less than 8 kilometers (5 miles). In such cases, alternative methods that utilize more specific models are appropriate. Accordingly, the FCC does not consider use of the formula in paragraph (a)(1) of this section with parameters outside of the limits in paragraphs (a)(3), (a)(4) and (a)(5) of this section or with data for radials other than the cardinal radials to be a valid alternative method for determining the CGSA of a cellular system.

* * * * *

§ 22.915 [Removed]

8. Section 22.915 is removed.

9. Section 22.917 is revised to read as follows:

§ 22.917 Emission limitations for cellular equipment.

The rules in this section govern the spectral characteristics of emissions in the Cellular Radiotelephone Service.

(a) *Out of band emissions.* The power of any emission outside of the

authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least $43 + 10 \log(P)$ dB.

(b) *Measurement procedure.*

Compliance with the limitation in paragraph (a) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or more. However, for measurements within 1 MHz of the center of the main emission bandwidth, a resolution bandwidth of not less than 1% of the main emission bandwidth may be employed. For the purpose of this section, the main emission bandwidth is the continuous width of the signal outside of which all emissions are attenuated by at least 26 dB below the transmitting power. Either peak or average measurements may be used, provided that both the emissions and the reference transmitter power are measured the same way. When measuring emissions, the transmitter must be set to operate as close to each of the upper and lower channel block edges as the design permits for normal operation.

(c) *Alternative out of band emission limit.* Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

(d) *Interference caused by out of band emissions.* If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

§ 22.919 [Removed]

10. Section 22.919 is removed.

11. Section 22.921 is revised to read as follows:

§ 22.921 911 call processing procedures; 911-only calling mode.

Mobile telephones manufactured after February 13, 2000 that are capable of operating in the analog mode described in the standard publication ANSI TIA/EIA-553-A-99 "Mobile Station—Base Station Compatibility Standard" (published November 1, 1999—available for purchase from Global Engineering Documents, 15 Inverness East, Englewood, CO 80112), must incorporate a special procedure for

processing 911 calls. Such procedure must recognize when a 911 call is made and, at such time, must override any programming in the mobile unit that determines the handling of a non-911 call and permit the call to be transmitted through the analog systems of other carriers. This special procedure must incorporate one or more of the 911 call system selection processes endorsed or approved by the FCC.

1. Section 22.937 is revised to read as follows:

§ 22.937 Demonstration of financial qualifications in cellular renewal proceedings.

Each applicant for a new cellular system whose application is competing with a cellular renewal application must demonstrate that it has, at the time the application is filed, either a firm financial commitment, an irrevocable letter of credit or a performance bond in the amount of its realistic and prudent estimated costs of construction and any other expenses to be incurred during the first year of operating its proposed system (the irrevocable letter of credit or performance bond must be from the type of financial institution described in paragraph (b) of this section), or available resources, as defined in paragraph (c) of this section, necessary to construct and operate its proposed cellular system for one year.

(a) The firm financial commitment may be contingent on the applicant obtaining an authorization. The applicant must also list all of its realistic and prudent estimated costs of construction and any other expenses to be incurred during the first year of operating its proposed system.

(b) The firm financial commitment required above shall be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier; shall specify the terms of the loan or other form of credit arrangement, including the amount to be borrowed, the interest to be paid, the amount of the commitment fee and the fact that it has been paid, the terms of repayment and any collateral required; and shall contain a statement:

(1) That the lender has examined the financial conditions of the applicant, including audited financial statements where applicable, and has determined that the applicant is creditworthy;

(2) That the lender has examined the financial viability of the proposal for which the applicant intends to use the commitment;

(3) That the lender is committed to providing a sum certain to the particular applicant;

(4) That the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and,

(5) That the commitment is not in any way guaranteed by an entity other than the applicant.

(c) An applicant intending to rely on personal or internal resources must submit:

(1) Audited financial statements certified within one year of the date of the cellular application, indicating the availability of sufficient net current assets to construct and operate the proposed cellular system for one year;

(2) A balance sheet current within 60 days of the date of filing its application that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed cellular system for one year; and,

(3) A certification by the applicant or an officer of the applicant organization attesting to the validity of the unaudited balance sheet.

(d) Applicants intending to rely upon financing obtained through a parent corporation must submit the information required by paragraph (c) of this section, as the information pertains to the parent corporation.

(e) As an alternative to relying upon a firm financial commitment, an irrevocable letter of credit, or a performance bond from a financial institution as described in paragraph (b) of this section, an applicant may state that it has placed in an escrow account sufficient cash to meet its construction and first-year operating expenses. Such a statement must specify the amount of cash, the escrow account number and the financial institution where the escrow account is located.

(f) Any competing application filed against the renewal application of an incumbent cellular system licensee that does not demonstrate, at the time it is initially filed, that the competing applicant has sufficient funds to construct and operate for one year its proposed cellular system will be dismissed.

13. § 22.941 is revised to read as follows:

§ 22.941 System identification numbers.

System identification numbers (SIDs) are transmitted by cellular systems to cellular telephones in their areas. Reception of a SID so transmitted enables cellular telephones to establish whether they would be in a "home" or "roamer" status when receiving service

from the cellular system. The SID of a cellular system is also programmed into the cellular telephones that are subscribed to that system. A cellular telephone transmits the programmed SID (among other numbers) when seeking service from a cellular system, enabling that system to determine whether the telephone is one of its subscribers or a roamer; and if a roamer, what the home system of that cellular telephone is. SIDs are also used for various billing purposes.

(a) Each cellular system must have at least one SID that is associated uniquely with it. Cellular system licensees must coordinate the usage of SIDs to ensure that this requirement is met.

(b) Cellular systems may transmit only their SID(s) or the SID(s) of other cellular systems. A cellular system may transmit the SID(s) of another cellular system only if the licensee of that system concurs with such use of its SID.

14. § 22.943 is amended by revising it to read as follows:

§ 22.943 Limitations on transfer of control and assignment for authorizations issued as a result of a comparative renewal proceeding.

Except as otherwise provided in this section, the FCC does not accept applications for consent to transfer of control or for assignment of the authorization of a cellular system that has been acquired by the current licensee for the first time as a result of a comparative renewal proceeding until the system has provided service to subscribers for at least three years.

(a) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a part of a *bona fide* sale of an on-going business to which the cellular operation is incidental.

(b) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a result of the death of the licensee.

(c) The FCC may accept and grant applications for consent to transfer of control or for assignment of authorization if the transfer or assignment is *pro forma* and does not involve a change in ownership.

§ 22.945 [Removed]

15. Section 22.945 is removed.

16. Section 22.946 is amended by revising it to read as follows:

§ 22.946 Service commencement and construction periods for cellular systems.

This section specifies the service commencement and construction

requirements for cellular systems. Related rule provisions and notification requirements are contained in § 1.946 of this chapter.

(a) *Commencement of service.* Each new cellular system licensed in markets 91–306 must be partially constructed and begin providing service to subscribers within 18 months. All other cellular systems must be at least partially constructed and begin providing service to subscribers within 12 months, beginning on the date of grant of the initial authorization. The grant of any subsequent authorizations (such as for major modifications) do not extend this period. To satisfy this requirement, a cellular system must be interconnected with the public switched telephone network (PSTN) and must be providing service to mobile stations operated by its subscribers and roamers. A cellular system is considered to be providing service only if mobile stations can originate telephone calls to and receive telephone calls from wireline telephones through the PSTN.

Note to paragraph (a) of § 22.946: The first cellular system authorized on each channel block in markets 1 through 90, inclusive, was allowed 36 months, rather than 12 months, to commence providing service. The first cellular system authorized on each channel block in markets other than markets 1 through 90, inclusive, was allowed 18 months, rather than 12 months, to commence providing service. These longer startup periods that were afforded to first-authorized cellular systems have all elapsed.

(b) *Construction period for specific facilities.* The construction period applicable to specific new or modified cellular facilities for which a separate authorization is granted is one year, beginning on the date the authorization is granted.

PART 24—PERSONAL COMMUNICATIONS SERVICES

17. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

18. Section 24.238 is revised to read as follows:

§ 24.238 Emission limitations for Broadband PCS equipment.

The rules in this section govern the spectral characteristics of emissions in the Broadband Personal Communications Service.

(a) *Out of band emissions.* The power of any emission outside of the authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least $43 + 10 \log(P)$ dB.

(b) *Measurement procedure.* Compliance with the limitation in paragraph (a) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or more. However, for measurements within 1 MHz of the center of the main emission bandwidth, a resolution bandwidth of not less than 1% of the main emission bandwidth may be employed. For the purpose of this section, the main emission bandwidth is the continuous width of the signal outside of which all emissions are attenuated by at least 26 dB below the transmitting power. Either peak or average measurements can be used, provided that both the emissions and the reference transmitter power are measured the same way. When measuring emissions, the transmitter must be set to operate as close to each of the upper and lower frequency block edges as the design permits for normal operation.

(c) *Alternative out of band emission limit.* Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

(d) *Interference caused by out of band emissions.* If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1296; MM Docket No. 01–113; RM–9655]

Radio Broadcasting Services; Big Piney and LaBarge, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Mount Rushmore Broadcasting, Inc. (“petitioner”) requesting allotments at Big Piney and LaBarge, Wyoming.