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#### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

#### PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.53 is proposed to be amended by revising paragraphs (d)(1) and (d)(3) to read as follows:

\* \* \* \* \*

(d) \* \* \*

(1) A continuation or divisional application (but not a continuation-in-part) of a prior nonprovisional application may be filed as a continued prosecution application under this paragraph, provided that:

(i) The application is for a design patent;

(ii) The prior nonprovisional application is a design application that is complete as defined by § 1.51(b); and

(iii) The application under this paragraph is filed before the earliest of:

(A) Payment of the issue fee on the prior application, unless a petition under § 1.313(c) is granted in the prior application;

(B) Abandonment of the prior application; or

(C) Termination of proceedings on the prior application.

\* \* \* \* \*

(3) The filing fee for a continued prosecution application filed under this

paragraph is the basic filing fee as set forth in § 1.16(f) or § 1.16(h).

\* \* \* \* \*

Dated: June 22, 2001.

**Nicholas P. Godici,**

*Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 01-17100 Filed 7-6-01; 8:45 am]

**BILLING CODE 3510-16-P**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR PART 64

[CC Docket No. 98-67; DA 00-2739]

#### Interstate Telecommunication Relay Service (TRS) Fund Advisory Council and TRS Fund Administrator's Recommended TRS Cost Recovery Guidelines

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** On December 6, 2000, the Commission released a document seeking comment on the cost recovery guidelines recommended by the Interstate Telecommunications Relay Service (TRS) Fund Advisory Council and the TRS Fund Administrator (Advisory Council and Fund Administrator, respectively).

**DATES:** Comments due July 30, 2001. Reply comments due August 6, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pam Slipakoff at (202) 418-7705 or [pslipako@fcc.gov](mailto:pslipako@fcc.gov) of the Common Carrier Bureau, Network Services Division. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 6A207, Washington, DC 20554. The fax number is: (202) 418-2345. The TTY number is: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** In the March 6, 2000 *Improved TRS Order*, 65 FR 38432 (June 21, 2000), the Commission amended the TRS rules to expand the kinds of relay services available to consumers and to improve the quality of TRS. The Commission also required the Advisory Council and the Fund Administrator to recommend a cost methodology to cover the additional requirements. In their recommendations, the Advisory Council and the Fund Administrator propose, among other things, applying the traditional TRS cost recovery model to each service, but capturing minutes of use and costs separately and

establishing separate reimbursement rates.

On November 9, 2000 the Advisory Council and the Fund Administrator filed their recommended TRS cost recovery guidelines as required by the *Improved TRS Order*. Those recommendations propose methodologies for recovering costs associated with the provision of traditional Telecommunications Relay Service (TRS), Speech-to-Speech (STS) Service, and Video Relay Service (VRS). These recommendations were placed on public notice on December 6, 2000. Comments were initially due on January 5, 2001 and reply comments were due on January 19, 2001. We now seek additional comment on these recommendations.

The Advisory Council and Fund Administrator's Recommended TRS Cost Recovery Guidelines will be available for review and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554, (202) 418-0270. It may also be viewed at [https://haifoss.fcc.gov/cgi-bin.ws.exe/prod/ecfs/comsrch\\_v2.hts](https://haifoss.fcc.gov/cgi-bin.ws.exe/prod/ecfs/comsrch_v2.hts), by typing 98-67 in the proceeding box and 11/09/2000 in the date box. The recommended guidelines may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, telephone 202-857-3800, facsimile 202-857-3805, TTY 202-293-8810.

#### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the document. The Commission will send a copy of the document including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the document and IRFA (or summaries thereof) will be published in the **Federal Register**. See id.

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

2. The Commission is issuing this document to seek comment on the recommended TRS cost recovery guidelines filed by the Advisory Council and the Fund Administrator on

November 9, 2000. For traditional TRS cost recovery, the Advisory Council and the Fund Administrator recommended that the Commission: (1) Continue to use the current national average costing and pricing methodology for the annual development of the interstate cost recovery reimbursement rate; (2) review the TRS Center Data Request to ensure that various sections and categories continue to be appropriate and up to date; (3) use the same allocation methodology in place today for allocating toll-free and 900 call minutes between interstate and intrastate demand; and (4) direct that Spanish relay costs be collected separately to test whether they are significantly different from English relay costs, and continue to reimburse providers on completed conversation minutes at a single national average reimbursement rate if there is no difference between the Spanish and English relay per-minute costs.

3. The Advisory Council and the Fund Administrator make the following recommendations for STS cost recovery: (1) The same cost recovery methodology used for computing the reimbursement rate in place today for traditional TRS interstate cost recovery could be used to develop the STS reimbursement rate; (2) due to its unique characteristics, a separate reimbursement rate based on STS costs and minutes should be calculated; (3) the TRS Center Data Request should be expanded to include specific STS sections to capture the costs and minutes separately from traditional TRS or VRS; and (4) providers should be reimbursed for completed conversation minutes at the national average reimbursement rate for STS.

4. The Advisory Council and the Fund Administrator make the following four recommendations with respect to VRS cost recovery: (1) The same methodology for rate development in place today for traditional TRS interstate cost recovery could be used to develop the VRS reimbursement rate; (2) providers should be reimbursed based on completed conversation minutes at a national average reimbursement rate; (3) the TRS Center Data Request should be expanded to include specific VRS sections to capture VRS costs and demand separately; and (4) due to its unique characteristics, a separate reimbursement rate based on VRS costs and demand should be calculated.

#### B. Legal Basis

5. The authority for actions proposed in this document may be found in §§ 64.603, and 64.604 of the Commission's Rules, 47 CFR 64.603,

64.604, and in sections 1, 2, 4, 225, 255, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 225, 255, 303(r).

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

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. See 5 U.S.C. 603(b)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." See 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. See 5 U.S.C. 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*." 5 U.S.C. 601(3). 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). See Small Business Act, 15 U.S.C. 632 (1996). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." See 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. See 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration). "Small governmental jurisdiction" See 47 CFR 1.1162 generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." See 5 U.S.C. 601(5). As of 1992, there were approximately 85,006 governmental entities in the United States. See U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments." This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. See id. The Census Bureau estimates that this ratio is approximately accurate for

all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules.

7. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding TRS.

8. *TRS Providers*. Neither the Commission nor the SBA has developed a definition of "small entity" specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. According to the FCC's most recent data, there are 11 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. The FCC does not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and the FCC is thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. The FCC notes, however, that these providers include several large interexchange carriers and incumbent local exchange carriers. Consequently, the FCC estimates that there are fewer than 11 small TRS providers that may be affected by the proposed rules, if adopted. The FCC seeks comment generally on its analysis identifying TRS providers, and specifically on whether the FCC should conclude that, for Regulatory Flexibility Act purposes, any of the TRS providers are in fact small entities.

9. *Wireline Carriers and Service Providers*. The SBA has developed a definition of small entities for telephone communications companies except 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 the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more

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 local exchange carriers (LECs). The FCC does not have data specifying the number of these carriers that are not independently owned and operated, and thus 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 the SBA's definition. Consequently, the FCC estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs.

10. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." See 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996). We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

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

11. The recommended guidelines may require TRS providers to track Spanish and English relay costs separately to see if there are significant differences between the two services. There may also be additional recordkeeping requirements imposed for STS and VRS cost recovery because these are relatively new services. These costs, however, should be minimal because the tracking procedures are similar to those already in place for traditional TRS. The FCC tentatively concludes that the proposals in the document would impose minimum burdens on small entities. In addition, these recordkeeping measures will promote more efficient service and allow the TRS providers to be reimbursed more accurately for their costs, thus negating any minimal costs imposed by these requirements. Furthermore, we do not expect these costs to burden small entities any more than large entities because the costs are part of the reimbursement process and will allow all providers to be accurately reimbursed. The FCC seeks comment on these tentative conclusions.

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

12. 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. 5 U.S.C. 603(c). The Commission has tentatively concluded that the proposed rules will have minimal economic impact on small entities because these rules are designed to allow all providers to be accurately reimbursed. Furthermore, the Advisory Council consists of members of state regulatory bodies, relay users, members of the disabilities community, large and small TRS providers, and large and small TRS contributors. As a result, the proposed guidelines are the result of input from the industry, including small business entities.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

None.

Report to Congress

13. The Commission will send a copy of this document, including a copy of this IRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the document and this IRFA will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

Ordering Clauses

16. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration.

14. The Initial Regulatory Flexibility Analysis for this document, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, is contained herein.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01-17032 Filed 7-6-01; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-1483, MM Docket No. 01-134, RM-10137]

### Radio Broadcasting Services; Elk City, OK and Borger, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by TV 31, L.L.C. requesting the reallocation of NTSC Channel 31 from Elk City, Oklahoma, to Borger, Texas, and modification of the construction permit for Station KBCA to specify Borger, Texas, as the community of license. The coordinates for Channel 31 at Borger are 35-41-56 and 100-53-34. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 31 at Borger.

**DATES:** Comments must be filed on or before August 13, 2001, and reply comments on or before August 28, 2001.