

employer under § 32.6, requires the employer to commence wage withholding on the first pay day after the employer receives the order. However, if the first pay day is within 10 days after receipt of the order, the employer may begin deductions on the second pay day.

(k) An employer may not discharge, refuse to employ, or take disciplinary action against a debtor a result of the issuance of a withholding order under this part.

§ 32.9 Financial hardship.

(a) A debtor whose wages are subject to a withholding order may, at any time, request a review by the Department of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting such a review under paragraph (a) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. The Secretary shall consider any information submitted in accordance with this part.

(c) If a financial hardship is found, the Secretary shall downwardly adjust, by an amount and for a period of time established by the Secretary, the amount garnished to reflect the debtor's financial condition. The Secretary will notify the employer of any adjustments to the amount to be withheld.

§ 32.10 Refunds.

(a) If the hearing official, pursuant to a hearing under this part, determines that a debt is not legally due and owing to the United States, the Secretary shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this part shall not bear interest.

§ 32.11 Ending garnishment.

(a) Once the Department has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs assessed pursuant to and in accordance with part 30 of this title, the Secretary shall send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the Secretary shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

§ 32.12 Right of action.

(a) The employer of a debtor subject to wage withholding pursuant to this part shall pay to the Department as directed in a withholding order issued under this part.

(b) The Secretary may bring suit against an employer for any amount that the employer fails to withhold from wages owed and payable to a debtor in accordance with §§ 32.6 and 32.8, plus attorney's fees, costs, and if applicable, punitive damages.

(c) A suit under this section may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of collection action" occurs when the Secretary has terminated collection action in accordance with part 30 of this title, or other applicable law or regulation.

(d) Notwithstanding paragraph (c) of this section, termination of the collection action will be deemed to occur if for a period of one (1) year the Department does not receive any payments from a debtor whose wages were subject to a garnishment order issued under this part.

Dated: November 7, 2001.

Tommy G. Thompson,
Secretary.

[FR Doc. 02-5924 Filed 3-12-02; 8:45 am]

BILLING CODE 4150-04-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170; FCC 02-43]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers.

DATES: Comments are due on or before April 12, 2002. Reply comments are due on or before April 29, 2002. Written comments by the public on the proposed and/or modified information

collections discussed in this Notice of Proposed Rulemaking are due on or before April 12, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 13, 2002.

ADDRESSES: All filings must be sent to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jbherman@fcc.gov and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW., Washington, DC 20503 or via the Internet to JeanetteThornton@omb.eop.gov. Parties should also send three paper copies of their filings to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CYB402, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400. For further information concerning the information collection contained in this Further Notice of Proposed Rulemaking contact Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jbherman@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking and Report and Order in CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170, FCC 02-43, released on February 26, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference

Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

This Further Notice of Proposed Rulemaking (Further Notice) 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.

Paperwork Reduction Act

The Further Notice contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens,

invites the general public and OMB to comment on the information collection(s) contained in this Further Notice, as required by the PRA, Public Law 104-13. Public and agency comments on the proposed and/or modified information collections discussed in this Further Notice are due on or before April 12, 2002. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before May 13, 2002.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.
Title: Contribution Methodology—FNPRM.
Form No.: FCC Forms 499-A, 499-Q, and 499-M.
Type of Review: Proposed New Collection.
Respondents: Business or other for-profit.

Title	Number of respondents	Est. time per response	Total annual burden
1. Assessment on a Connection and Capacity Basis <i>Total Annual Burden:</i> 69,250 <i>Cost to Respondents:</i> \$0.	5,500	19.5	69,250
2. Assessment on a Modified Revenue Basis <i>Total Annual Burden:</i> 81,250 <i>Cost to Respondents:</i> \$0.	5,500	29.5	81,250

¹ 9.5 hours for 3,500 respondents that file the annual filing and 1.5 hours for 2,000 respondents that file the monthly filing, if adopted.
² 9.5 hours for 3,500 respondents that file the annual filing and 6 hours for 2,000 respondents that file the quarterly filing, if adopted.

Needs and Uses: The Commission has issued a Further Notice which seeks comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers. The Commission seeks comment on specific proposals to require carriers to contribute based on the number and capacity of connections to a public network, or to contribute based on modifications to the existing mechanism, such as on a projected revenues basis. Additionally, the Commission seeks comment on limiting the manner in which carriers recover contribution costs from their customers. If carriers choose to recover universal service contributions from their customers through line items, the Commission seeks comment on requiring carriers to do so through a uniform universal service line item that corresponds to the contribution assessment on the carrier. The Universal Service Administrative Company (Administrator) would use information filed on connections and capacity or revenues to determine the universal service contribution factor. Section 254 of the Act requires carriers providing interstate telecommunications services to contribute to universal service. Currently, respondents file their gross-

billed end-user telecommunications revenues on a quarterly basis in FCC Form 499-Q, and on an annual basis in FCC Form 499A.

Synopsis of Further Notice

I. Introduction

1. In 1997, the Commission adopted a system under which telecommunications providers contribute to universal service based on their end-user revenues. Since that time, the telecommunications marketplace has changed rapidly and technologies have evolved, with major developments including increased competition, migration to new products and services, and bundling of traditionally distinct services. These trends could erode the contribution base over time. In light of these trends, the Commission began a proceeding to revisit its universal service contribution methodology in May 2001. Commenters have submitted a range of innovative ideas and proposals for reforming the current system, while others assert that the status quo should be maintained. We now seek to further develop the record on some of these proposals.

2. In the Further Notice, we seek more focused comment on whether to assess contributions based on the number and capacity of connections provided to a public network, as proposed by some commenters. We seek comment on

whether a connection-based assessment approach would ensure the long-term stability, fairness, and efficiency of the universal service contribution system in a dynamic telecommunications marketplace. We also invite commenters to supplement the record developed in response to the 2001 Notice, (66 FR 28718, May 24, 2001), with any new arguments or data regarding proposals to retain or modify the existing revenue-based system. In addition, we seek additional comment in the Further Notice on reforming the contribution recovery process to make it more fair and understandable for consumers.

3. Whereas this proceeding concerns the Commission's methodology for assessment and recovery of universal service contributions generally, we seek comment in a companion proceeding on a different but related issue: In an evolving telecommunications marketplace, should facilities-based broadband Internet access providers be required to contribute to support universal service and, if so, on what legal basis? That proceeding explores this question by seeking comment on what universal service contribution obligations providers of facilities-based broadband Internet access should have as the telecommunications market evolves, and how such obligations can be administered in an equitable and non-discriminatory manner.

Commenters should be mindful of the relationship between this proceeding and the *Broadband NPRM*, (67 FR 9232, February 28, 2002), proceeding and, where appropriate, should address interrelated issues raised by the proposals.

II. Overview

4. Prior to passage of the Telecommunications Act of 1996, the Commission and the states oversaw a variety of explicit and implicit subsidy programs designed to reduce the cost of telecommunications services for consumers living in high-cost areas and for eligible low-income consumers. Universal service for high-cost areas helped to ensure that consumers in those areas paid rates for services comparable to those paid by consumers in low-cost areas, and the low-income program helped to make services more affordable for low-income consumers. Ensuring the affordability and availability of telecommunications services benefited consumers, and continues to do so, by increasing subscribership levels and, consequently, the value of the Nation's communications network.

5. In section 254 of the Telecommunications Act of 1996, Congress further codified the Commission's historic commitment to ensuring the affordability and availability of telecommunications services for all Americans. Specifically, section 254(d) provides that federal support mechanisms should be specific, predictable, and sufficient to preserve and advance universal service, and that telecommunications providers should contribute on an equitable and nondiscriminatory basis. The Commission implemented the current contribution system in 1997. This system has two distinct but related components: The assessment of contributions on telecommunications providers; and the recovery of contribution payments by providers from their customers. Contributors are assessed on the basis of their interstate and international end-user telecommunications revenues, based on a percentage or "contribution factor" that is calculated every quarter. The Commission recognized in 1997 that contributors likely would recover their contributions to universal service from their end users, although they are not required to do so. Contributors are permitted to do so in any equitable and non-discriminatory manner. Many contributors elect to recover their contributions from their customers through a line-item fee, while others do not have a specific line item to recover

the costs and instead recover them through their rates. In considering possible reforms to the universal service contribution system, we may determine that it is appropriate to modify the assessment and/or the recovery components.

6. Over the last few years, important changes have occurred in the interstate telecommunications marketplace. Interstate revenues grew consistently between 1984 and 1997, when the current contribution system was adopted, and such growth was expected to continue. Recently, however, interstate revenues have declined for interexchange carriers, which are now responsible for contributing approximately 63 percent of federal universal service funding. Various factors may be responsible for this decline, including migration of customers to new products and services, local exchange carrier entry into the long distance market, and related price competition. If the current methodology is not modified or replaced, this trend could erode the contribution base over time, requiring increases in the contribution factor to maintain current levels of universal service support.

7. We also have observed broader fluctuations in the contribution base. The Common Carrier Bureau recently reported that annual end-user switched interstate telecommunications revenues declined in 2000, the first time since such data has been compiled. We also observed a decline in assessable revenues in the first half of 2001. One analyst projected that United States long distance revenues would decline 12 percent in 2001.

8. Competition in the interexchange market continues to increase. For example, Regional Bell Operating Companies (RBOCs) increasingly are providing interstate long distance service. To date, the Commission has granted RBOCs approval to offer in-region interLATA service in nine states: Arkansas, Connecticut, Massachusetts, Missouri, New York, Pennsylvania, Kansas, Oklahoma, and Texas. One analyst recently reported that Verizon and SBC already have captured 25 percent of the long distance markets in New York and Texas, respectively. Verizon recently reported that it is the fourth-largest residential long distance provider in the nation based on subscriber market share.

9. Because the current contribution system is based on historical revenues, some contend that it creates competitive advantages for contributors with increasing interstate telecommunications revenues, while disadvantaging those with declining

revenues. Under the current system, contributors are assessed on revenues that they earned six months earlier. As a result, contributors with increasing revenues recover contributions from a larger revenue base than the one on which they are assessed, and can pass through to their customers lower fees than competitors with declining revenues, who must recover their contributions from a declining revenue base. New entrants also may be able to undercut the prices offered by established service providers who already contribute to universal service, because they do not contribute for the first six months that they provide service due to their lack of historical revenues for that period.

10. In addition, the growth of Commercial Mobile Radio Service (CMRS) appears to be causing a significant migration of interstate telecommunications revenues from wireline to mobile wireless providers. Since the current assessment system was adopted in 1997, mobile telephony subscribership has increased from 55.3 million to 109.5 million subscribers, and average customer minutes of use have increased from 117 minutes per month to 255 minutes per month. Consistent with these trends, mobile service is becoming a substitute for traditional wireline services such as payphones and second lines to the home, and there is a small but growing number of customers who have substituted mobile wireless for their primary residential lines. In addition, many customers are using their mobile service rather than interexchange service to make long distance calls: According to one report, 16 percent of customers surveyed now make most of their long distance calls using mobile services. In some areas, such "technology substitution" has begun to erode revenue from interexchange services, which is currently the primary contribution source for universal service funding.

11. Since 1997, marketplace developments also have blurred the distinctions between interstate/intrastate and telecommunications/non-telecommunications revenues on which the current contribution system is based. For example, carriers increasingly are bundling services together in creative ways, such as by offering flat-rate packages that include both local- and long-distance services. Virtually all of the major mobile telecommunications service providers now offer a type of Digital-One-Rate (DOR) pricing plan that allows customers to purchase a bucket of minutes on a nationwide, or nearly

nationwide, network without incurring roaming or long distance charges. A number of carriers, including AT&T Wireless, Verizon Wireless, and Cingular Wireless, also have begun offering regional DOR calling plans. At the end of 2000, approximately 20 million mobile wireless telephone customers subscribed to calling plans that do not charge extra for long distance. The availability of such plans compounds the inherent difficulty of identifying interstate revenues in a mobile environment.

12. Likewise, more and more carriers now offer bundled packages of telecommunications services and customer premises equipment (CPE) or information services. The accelerating development of new technologies like "voice over Internet" increases the strain on regulatory distinctions such as interstate/intrastate and telecommunications/non-telecommunications, and may reduce the overall amount of assessable revenues reported under the current system. Additional legal, technological, and market developments that we cannot foresee also could significantly impact the universal service contribution base.

13. In light of these and other changes in the telecommunications marketplace, we have recognized the need to review the current system for assessing universal service contributions. Fifty-nine parties filed comments in response to the 2001 Notice. Our examination of the record reveals a consensus that reforms are necessary, although different industry segments differ on what reforms should be undertaken. Some commenters support retention of the current revenue-based assessment system. Other commenters support modifying the current system, for example, by assessing contributions on projected or current revenues rather than historical revenues. Still other commenters support replacing the current revenue-based assessment system with one that focuses on connections.

14. Our primary goal in considering possible reforms of the current assessment system is to ensure the stability and sufficiency of the universal service fund as the marketplace continues to evolve. We also seek to identify the best means of ensuring that contributors continue to be assessed in an equitable and nondiscriminatory manner. In addition, we seek to provide certainty to market participants, and minimize the regulatory costs of complying with universal service obligations. Achievement of these goals, in turn, should benefit consumers by

helping to ensure that the contribution recovery process is fair, reasonable, and readily understood by consumers.

15. In this Further Notice, we seek comment on whether to base contributions not on a contributor's revenues, but on the number and capacity of the connections it provides to a public network. Under this proposal, contributions for residential, single-line business, and mobile wireless connections would be assessed on a flat, monthly basis. Contributions for multi-line business connections would be calculated to recover the remaining universal service funding needs, based on the capacity of the connections provided. In addition, we seek comment on a variant of a connection-based assessment methodology that would maintain the relative contribution burdens on different industry segments. We also invite commenters to supplement the record developed in response to the 2001 Notice with any new arguments or data regarding whether to retain or modify the existing system.

16. A connection-based assessment may address the difficulty of applying regulatory distinctions inherent in the existing system to new services and technologies. By harmonizing the contribution system with the telecommunications marketplace, a connection-based assessment approach may help to ensure the stability and sufficiency of the universal service contribution base over time. Such an approach also may provide contributors with greater certainty, reduce administrative costs, and avoid marketplace distortions, ultimately benefiting consumers. Moreover, by eliminating some of the complexity involved with contribution recovery fees and making only one provider responsible for contributing based on a single connection, a connection-based assessment also may make the recovery process more understandable for consumers. Furthermore, by reducing costs associated with the recovery of contributions, a connection-based assessment also may reduce the total amount that consumers pay in contribution recovery fees.

17. Our experience over the last few years also has led us to reevaluate carrier recovery practices. Carriers currently have the flexibility to recover their contribution obligations in any manner that is equitable and nondiscriminatory. Some elect to recover their contributions from their customers through line-item charges, while others elect to collect their contribution requirement through their rates. Although the contribution factor

is uniform for all contributors, universal service line items to consumers may vary widely among contributors, and often significantly exceed the amount of the contribution factor. For example, in the second quarter of 2001, after the Commission established a contribution factor of 6.882 percent, one interexchange carrier raised its residential universal service line item to 12 percent. That carrier's residential line item was subsequently reduced to 9.9 percent. Another interexchange carrier increased its residential line item to 11.5 percent on January 1, 2002, even though the contribution factor recently decreased from 6.918 in the fourth quarter to 6.808 percent in the first quarter.

18. Some carriers also employ different recovery methods for different customer groups, imposing universal service line-item charges on certain categories of presubscribed customers, but recovering an undisclosed amount from other customers through per-minute service rates. For example, some carriers do not recover universal service contributions from certain categories of customers, such as dial-around customers. In addition, universal service line-item percentages for residential customers often are higher than those for business customers. Other carriers charge customers large, up-front universal service fees that are unrelated to their revenues from a customer. Such practices may be inexplicable to the casual observer, and may shift a disproportionate share of the cost of contributions onto certain customer classes.

19. In this Further Notice, therefore, we seek comment on how to modify our rules to ensure that carriers that elect to recover their universal service obligations from their customers do so in a manner that is reasonable, fair, and understandable. In particular, we seek comment on whether to require carriers that elect to recover through separate universal service line-item charges on any customer bill to apply a uniform line item on all customer bills. To further develop the record in the *Truth-in-Billing* proceeding, we also seek comment on whether to require carriers to describe such line-item charges on customer bills as the "Federal Universal Service Fee." We seek comment on whether these proposals would help to prevent consumers from being charged excessive universal service fees, to make the recovery process more understandable for consumers, and to ensure that carriers do not recover more from certain customers or classes of customers than from others. We also seek comment on whether the proposed

reforms would place significant administrative or financial burdens on contributing carriers and on the potential benefits and costs for consumers.

III. Procedural Issues

A. *Ex Parte* Presentations

20. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Initial Regulatory Flexibility Act Analysis

21. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. 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 Further Notice provided below in section III.C. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for and Objectives of the Proposed Rules

22. Over the last few years, important changes have occurred in the interstate telecommunications marketplace. Recently, interstate revenues have declined for certain interexchange carriers, who are now responsible for contributing approximately 63 percent of federal universal service funding. We observed a decline in assessable revenues in the first half of 2001. One analyst projects that United States long distance revenues will decline 12 percent in 2001. Various factors may be responsible for this decline, including migration of customers to new products and services, local exchange carrier entry into the long distance market, and related price competition. This trend could erode the contribution base over time, requiring increases in the contribution factor.

23. Additionally, since 1997, marketplace developments also have blurred the distinctions between interstate/intrastate and telecommunications/non-telecommunications revenues on which

the current contribution system is based. Carriers increasingly are bundling services together in creative ways, for example by offering flat-rate packages that include both local and long distance services. Virtually all of the major mobile telecommunications service providers now offer a type of Digital-One-Rate (DOR) pricing plan that allows customers to purchase a bucket of minutes on a nationwide, or nearly nationwide, network without incurring roaming or long distance charges. A number of carriers, including AT&T Wireless, Verizon Wireless, and Cingular Wireless, also have begun offering regional DOR calling plans. At the end of 2000, approximately 20 million mobile telephone customers subscribed to calling plans that offer free nationwide long distance. The availability of such plans compounds the inherent difficulty of identifying interstate revenues in a mobile environment. Traditional wireline providers also are increasingly offering bundled rates for packages of local and long distance services.

24. Likewise, more and more carriers now offer bundled packages of telecommunications services and customer premises equipment (CPE) or information services. The accelerating development of new technologies like "voice over Internet" increases the strain on regulatory distinctions such as interstate/intrastate and telecommunications/non-telecommunications, and may reduce the overall amount of assessable revenues reported under the current system. Additional legal, technological, and market developments that we cannot foresee now also could significantly impact the universal service contribution base.

25. In light of these and other changes in the telecommunications marketplace, the Commission has recognized the need to review the current system for assessing universal service contributions. Our examination of the record reveals a consensus that reforms are necessary, although different industry segments differ on what reforms should be undertaken. Our primary goal is to ensure the stability and sufficiency of the universal service fund as the marketplace continues to evolve. We also seek to identify the best means of ensuring that contributors continue to be assessed in an equitable and nondiscriminatory manner, and recover their contributions in ways that are fair and understandable for consumers. In addition, we seek to provide certainty to market participants, and minimize the regulatory costs of

complying with universal service obligations.

2. Legal Basis

26. The legal basis as proposed for this Further Notice is contained in sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 4(j), 201–205, 254, 403.

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

27. The Commission's contributor reporting requirements apply to a wide range of entities, including all telecommunications carriers and other providers of interstate telecommunications services that offer telecommunications services for a fee. Thus, we expect that the proposal in this proceeding could have a significant economic impact on a substantial number of small entities. Of the estimated 5,000 filers of the Telecommunications Reporting Worksheet, FCC Form 499, we do not know how many are small entities, but we offer below a detailed estimate of the number of small entities within each of several major carrier-type categories.

28. To estimate the number of small entities that could be affected by these proposed rules, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines the term "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 that: (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). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

29. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

30. 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." 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. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

31. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Trends in Telephone Service* report. According to data in the most recent report, there are 4,822 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

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

the decisions and rules adopted in this Order.

33. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing 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 LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

34. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually on the Form 499-A. According to our most recent data, there are 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers and 541 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently,

we estimate that there are fewer than 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by the decisions and rules adopted in this Order.

35. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. 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. 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. 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. According to the most recent *Trends Report*, 806 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. 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 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. We estimate that there are fewer than 806 small cellular service carriers that may be affected by the proposed rules, if adopted.

36. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. If

this general ratio continues in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

37. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, (62 FR 16004, April 3, 1997), we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Two auctions of Phase II licenses have been conducted. In the first auction, nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: One of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

38. *Private and Common Carrier Paging.* In the *Paging 200 MHz Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these definitions. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-

seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends Report*, 427 carriers reported that they were engaged in the provision of paging and messaging services. 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 therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 427 small paging carriers that may be affected by the decisions and rules adopted in this Order. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

39. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No.

35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

40. *Narrowband PCS.* To date, two auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of \$40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*, (65 FR 35875, June 6, 2000). A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

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

as small entities under the SBA's definition.

42. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 100 licenses in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

43. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of \$15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the \$15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 EA licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

44. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended

implementation authorizations are held by small entities, as that term is defined by the SBA.

45. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

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

46. Should the Commission decide that fundamental reform of the existing contribution methodology is needed, the associated rule changes potentially could modify the reporting and recordkeeping requirements of telecommunications service providers regulated under the Communications Act. As discussed previously, we potentially could require telecommunications service providers to file additional and/or different monthly or quarterly reports. Any such reporting requirements potentially could require the use of professional skills, including legal and accounting expertise. Without more data, we cannot accurately estimate the cost of compliance by small telecommunications service providers. In this Further Notice, we therefore seek comment on the frequency with which carriers should submit reports to USAC, the types of burdens carriers will face in periodically submitting reports to USAC, and whether the costs of such reporting are outweighed by the potential benefits of the possible reforms. Entities, especially small businesses, are encouraged to quantify the costs and benefits of the reporting requirement proposals.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

47. 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.

48. As discussed previously, this Further Notice seeks comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the

universal service fund and the manner in which carriers may recover those costs from their customers. We seek more focused comment on whether to assess contributions based on the number and capacity of connections provided to a public network, as proposed by some commenters. A connection-based assessment approach may address the difficulty of applying regulatory distinctions inherent in the existing system to new services and technologies. By harmonizing the contribution system with the telecommunications marketplace, a connection-based assessment approach may help to ensure the stability and sufficiency of the universal service contribution base over time. We also invite commenters to supplement the record developed in response to the 2001 Notice with any new arguments or data regarding whether to retain or modify the existing revenue-based system. For example, some commenters suggest that we retain or modify slightly the existing system. In addition, we seek additional comment in the Further Notice on reforming the contribution recovery process to make it more fair and understandable for consumers.

49. Wherever possible, the Further Notice seeks comment on how to reduce the administrative burden and cost of compliance for small telecommunications service providers. We seek comment, for example, on the appropriate frequency and content of reporting under a connection-based methodology. We particularly seek comment from contributors that are "small business concerns" under the Small Business Act.

50. Contributors currently report their gross-billed interstate end-user telecommunications revenues on a quarterly basis on the Form 499-Q. We seek comment on requiring contributors to report the number and capacity of their connections on a monthly basis. Under this proposal, each month contributors would receive a fill-in-the-blank bill from USAC and would remit their contribution based on the number and capacity of their end-user connections in service as of the end of the prior month. Therefore, the proposed new Form 499-M would serve both as a contributor's monthly bill and its reporting obligation. Although contributors would have to report more frequently under this proposal than under the current system, their overall reporting burdens may be significantly reduced because they would only be required to report the number and capacity of the connections they provide, rather than their interstate telecommunications revenues. In

addition, a contributor's reporting obligation and its bill would become one in the same. We also seek comment on whether requiring only one entity to contribute for a connection would ease some of the administrative burdens associated with compliance. Last, we also seek comment on an alternative that might assist small entities: how to craft a de minimis exemption should the Commission choose to adopt a connection-based system.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

51. None.

A. Comment Filing Procedures

52. Pursuant to § 1.415 and § 1.419 of the Commission's rules, interested parties may file comments April 12, 2002, and reply comments April 29, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

53. 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. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. 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 an electronic comment 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.

54. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

55. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Sheryl Todd, Accounting Policy Division, 445 12th

Street, SW., Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 96-45, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CYB402, Washington, DC 20554.

56. Written comments by the public on the proposed and/or modified information collections are due on or before April 12, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 13, 2002. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jbherman@fcc.gov and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to JeanetteThornton@omb.eop.gov.

IV. Ordering Clauses

57. Pursuant to the authority contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, this Further Notice of Proposed Rulemaking is adopted.

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

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02-6029 Filed 3-12-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020215032-2032-01; I.D. 110701D]

RIN 0648-AP59

Fisheries of the Northeastern United States; Proposed 2002 Specifications for the Atlantic Bluefish Fishery

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

ACTION: Proposed 2002 specifications for the Atlantic bluefish fishery; request for comments.

SUMMARY: NMFS proposes 2002 specifications for the Atlantic bluefish fishery, including total allowable landings (TAL), state-by-state commercial quotas, and recreational harvest limits and possession limits for Atlantic bluefish off the East Coast of the United States. The intent of the specifications is to conserve and manage the bluefish resource and provide for sustainable fisheries.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on March 28, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA), Preliminary Regulatory Economic Evaluation (PREE), Initial Regulatory Flexibility Analysis (IRFA), and Essential Fish Habitat Assessment (EFHA) are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA, PREE, IRFA, and EFHA are accessible via the Internet at <http://www.nero.gov/ro/doc/nr.htm>.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Please mark the envelope, "Comments--2002 Bluefish Specifications." Comments also may be sent via facsimile (fax) to 978-281-