

a. By adding "July 24, 2001" in place of "October 1, 2001" in both places where it appears in paragraph (a) and by removing the last sentence of paragraph (a);

b. By adding "July 24, 2001" in place of "October 1, 2001" in both places where it appears in paragraph (b)(1);

c. By adding the word "and" at the end of paragraph (b)(3);

d. By adding "July 24, 2001" in place of "October 1, 2001" and in place of "September 30, 2001" in paragraph (b)(4);

e. By removing the word "and" at the end of paragraph (b)(4);

f. By removing paragraph (b)(5);

g. By removing the word "will" in the first sentence of paragraph (d) and adding the word "may" in lieu thereof; by adding "if the petition presents unique issues that have not been addressed in previous determinations." after the word "comment" in the first sentence of paragraph (d); and by inserting ", if any," after the word "comments" in the third sentence of paragraph (d);

h. By adding "July 24, 2001" in place of "September 30, 2001" in paragraph (f)(4);

i. By adding "July 24, 2001" in place of "October 1, 2001" in paragraph (g)(1);

j. By revising paragraph (g)(2); and

k. By adding new paragraphs (g)(3) and (g)(4).

The revisions and additions read as follows:

§ 356.53 Conflicts with international agreements.

* * * * *

(g) * * *

(2) To the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on July 24, 2001, if any ownership interest in that owner is transferred to or otherwise acquired by a Non-Citizen or if the percentage of foreign ownership in the vessel is increased after such date.

(3) An ownership interest is deemed to be transferred under this paragraph (g) if:

(i) There is a transfer of direct ownership interest in the primary vessel owning entity. If the primary vessel owning entity is wholly owned by another entity, the parent entity will be considered the primary vessel owning entity;

(ii) There is a transfer of indirect ownership at any tier that results in a transfer of 5% or more of the interest in the primary vessel owning entity.

(4) A transfer of interest in a vessel owner does not include:

(i) Transfers of disparately held shares of a vessel-owning entity if it is a

publicly traded company and the total of the shares transferred in a particular transaction equals less than 5% of the shares in that class. An interest in a vessel owning entity that exceeds 5% of the shares in a class can not be sold to the same Non-Citizen through multiple transactions involving less than 5% of the shares of that class of stock in order to maintain the exemption for the vessel owner; or

(ii) Transfers pursuant to a divorce or death.

Dated: April 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02-9005 Filed 4-15-02; 8:45 am]

BILLING CODE 4910-81-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[CI Docket No. 02-32, CC Docket No. 94-93, CC Docket No. 00-175; FCC 02-46]

Establishment of Rules Governing Procedures To Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on whether to establish a consumer complaint mechanism to apply to all entities regulated by the Commission. The complaint mechanism will be patterned after our existing rules for informal complaints filed against common carriers pursuant to section 208 of the Act.

DATES: Comments are due May 16, 2002 and reply comments are due May 31, 2002. Written comments by the public on the proposed information collections are due May 16, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 17, 2002.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be

accessed via the Internet at 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 Judith Boley 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, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to jthornto@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Lynn Remly or Margaret Egler (202-418-1400), Consumer Information Bureau. For additional information concerning the information collection(s) contained in this document, contact Judith Boley Herman at 202-418-0214, or via the Internet at jbHerman@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CI Docket No. 02-32, CC Docket Nos. 94-93 and 00-175, FCC 02-46, released February 28, 2002. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. On February 14, 2002, the Commission released a Notice of Proposed Rule Making (NPRM) requesting comment on proposals to establish a unified, streamlined process for the intake and resolution of informal complaints filed by consumers in order to promote maximum compliance with the requirements of the Communications Act of 1934, as amended, (the Act) and our implementing rules and orders.

2. We propose to establish a uniform, streamlined consumer complaint process that will be applicable to all services regulated by the Commission that are not currently covered by the common carrier informal complaint rules. We also propose changes to the common carrier informal complaint process, including specifying the type of documentation that should accompany informal complaints as well as prescribing a specific time frame within which a carrier must respond to such a complaint.

II. Overview

3. In the NPRM, we seek comment on our proposal to create a consumer complaint process patterned after our Section 208 informal complaint rules and to extend this process to all entities regulated by the Commission. Currently, the informal complaint rules apply only to complaints against common carriers. We do not propose to limit or otherwise alter any remedies and procedural options in areas in which the Commission has already established specific informal complaint procedures. Those informal consumer complaints concerning issues for which there is no established resolution procedure and which are not subject to the jurisdiction of another governmental entity would be included under the informal consumer complaint rules proposed in this NPRM. Accordingly, we propose to provide that consumers generally should file informal complaints with the Consumer Information Bureau (CIB). While, as noted below, the Enforcement Bureau (EB) will not adjudicate informal consumer complaints, it will adjudicate formal consumer complaints and will have the authority to investigate, on its own motion, potential violations evidenced through the filing of informal complaints. If a given complaint is subject to an existing complaint procedure, CIB would facilitate the processing of such complaints by, for example, ensuring that the appropriate Bureau receives the complaint for resolution. If there is no established resolution procedure for the specific complaint, it would be processed under the procedure proposed in this notice. We invite comment on this proposal. The Commission has the authority to establish a uniform consumer complaint process applicable to all regulated entities. We tentatively conclude that it is in the public interest to provide consumers with an initial single point of contact to deal with their complaints concerning all of the entities regulated by the Commission, and not only common carriers.

4. Under our proposed new approach, informal complaints would be processed by CIB, or another bureau where appropriate, through the non-adjudicatory process set forth in our informal common carrier complaint rules. EB, or other bureaus in those instances where enforcement responsibility lies in such bureaus, would adjudicate "formal" consumer complaints and could, on its own motion, commence an investigation where informal consumer complaints suggest a pattern of violations of the Act or the Commission's rules by a

particular licensee, or serious violations that justify enforcement action even in the absence of a pattern. We seek comment on this approach.

5. Commenters are also requested to describe differences in the characteristics of the various communications-related services regulated by the Commission, and whether such differences warrant different informal complaint procedures administered by the Commission. For example, we recognize that, in the common carrier context, consumers and carriers often have a direct contractual relationship. No such relationship exists, for example, between broadcast licensees and consumers. Moreover, whereas consumers who file complaints against common carriers often seek monetary relief such as a refund or credit, consumers who file complaints against broadcast licensees typically have asked the Commission to exercise its discretion to take enforcement action such as a forfeiture or revocation of license. Nevertheless, even in these cases, voluntary action by the broadcaster, *e.g.*, a public apology for its airing of objectionable material, might resolve the complaint. We seek comment on whether these differences warrant excluding certain classes of complaints from the uniform procedures proposed here.

6. We also seek comment on the extent to which our streamlining proposals, if adopted, would impose an unnecessary burden on small regulated entities, as defined by the Regulatory Flexibility Act. For example, we ask whether the time to reply to complaints should be extended in the case of small entities, to avoid taxing their limited resources in time and money. Commenters are requested to make specific suggestions about how the proposals described in the paragraphs that follow might be adjusted in the case of small regulated entities.

7. Where appropriate, we encourage consumers to express informally their concerns or grievances about regulated products and services directly to the product or service provider before filing a complaint with the Commission. We recognize, however, that this informal approach may be more appropriate in the sort of relationships described above, between a common carrier or a cable system operator and a consumer, rather than, for example, some complaints between a broadcast licensee and a consumer. We expect that many disputes will be satisfactorily resolved though such communications without the need to file complaints. We do not propose, however, that consumers be required to engage in such

communications as a prerequisite to filing an informal or formal consumer complaint with the Commission. We believe that access to a consumer-friendly informal complaint process will ensure that consumers have an absolute right to have their grievances promptly addressed by the company involved with reasonable expectation that the regulated company will respond in the manner and within the time period prescribed by the Commission. We especially invite interested parties to comment on what if any measures are needed to ensure that consumers reasonably have the ability to contact companies directly with their grievances. We note, for example, that our Section 255 accessibility complaint rules require covered manufacturers and service providers to maintain a point of contact for receiving complaints and inquiries about their products and services from consumers and to file that point of contact information with the Commission. We seek comment on whether the Commission should have a similar requirement for other regulated entities, or whether there are other alternatives for assisting consumers who wish to contact a company directly with a complaint?

8. Under our common carrier complaint rules, in accordance with Section 208 of the Act, informal complaints are filed directly with the Commission, which then serves on the carrier a "Notice of Complaint" that includes a copy of the complaint and instructions to respond to the complaint within a specified time. We propose to adopt a rule directing Commission staff to forward informal consumer complaints that raise issues within the Commission's jurisdiction and that meet the form and content requirements discussed below to the regulated entity or entities involved in the same manner as is done under our common carrier complaint rules, unless there is a more effective means to resolve the complaint. For example, in some cases informal consumer complaints may be resolved more quickly if the regulated entity that is the subject of the complaint is contacted by telephone or e-mail. Interested parties are invited to address the feasibility of this approach with respect to non-common carriers and whether different rules or procedures should apply.

9. We propose to encourage informal consumer complaints to be transmitted to the Commission by any reasonable means, including transmission by letter, facsimile transmission, telephone (voice and TTY), Internet e-mail, and audio or video-cassette recording. Our objective is to make it easy for consumers to file

complaints and for companies that are the subjects of complaints to move promptly to satisfy any meritorious complaints. Therefore, we propose that any consumer complaint filed with the Commission should include: (1) The name and address of the complainant; (2) the name and address of the company against whom the complaint is being made, and in the case of a broadcast station, the station call sign or network affiliation; (3) details about the product or service about which the complaint is being made; (4) a statement of facts supporting the complainant's allegation that the regulated company has acted or failed to act as required by the Act or the Commission's rules or orders; (5) if applicable, a copy of the complainant's bill or other correspondence from the regulated entity that gives rise to the dispute; and (6) the specific action by the regulated entity that is being sought by the complainant. We invite comment on this proposal. We also seek comment on whether the Commission should make it a priority to facilitate the filing of online complaints. What types of measures should the Commission take in this regard?

10. Although these parameters will necessitate some diligence on the part of consumers in preparing and submitting complaints, we believe that any such burdens are far outweighed by the benefits of prompt and decisive action by the company involved or Commission staff. In order to ensure that all consumer complaints are addressed, Commission staff will be available to assist consumers in the filing of informal complaints. This may entail staff assisting the consumer in obtaining the necessary information. We seek comment on the burden imposed by this complaint process, specifically as to whether there are scenarios in which the proposed "informal" process would make it more, not less, difficult for consumers to obtain redress for their complaints? We seek comments and proposals as to how to make this process more consumer friendly, and to limit the burden placed on complaining consumers. The level and nature of the information required is likely to vary widely depending upon the specific allegations raised, and we believe that it is impractical to fashion a rule to anticipate these varying circumstances. We request comment on the kinds of information and documentation that should be required in informal consumer complaints and on what, if any, additional information should be included in informal consumer complaints against broadcast station

licensees and other non-common carrier entities. We also request comment on whether we should make changes to our informal common carrier complaint rules with regard to the types of information and documentation that should be required pursuant to § 1.716 of our rules.

11. We envision an informal consumer complaint process that emphasizes informal, cooperative efforts between consumers and companies to resolve disputes without extensive involvement by Commission staff. We also wish to avoid imposing cumbersome filing and reporting requirements that might deprive consumers and companies of non-adversarial opportunities to resolve their disputes. Just as it is important for consumers to have a simple, easy-to-understand process for raising their concerns with the Commission, it is equally important that companies be able to respond quickly and effectively to those concerns. As with the common carrier complaint rules, a non-common carrier will be required to send a copy of its response to the complainant. It is not feasible to speculate about specific types of information that may be required by Commission staff in response to a complaint. Thus, we do not contemplate the imposition of any undue burdens on non-common carriers that have procedures in place for the quick and effective resolution of consumer complaints.

12. We seek comment, however, on whether we should set a specific time frame within which a company must respond to notification of an informal consumer complaint. We anticipate that there would be a benefit to consumers in requiring carriers to respond within a predictable, uniform time frame, but we are concerned that setting such a time frame might do away with the flexibility necessary to respond to complaints of varying complexity. We ask commenters to comment on the appropriateness of a fixed 30-day, or other fixed number of days, response period for informal consumer complaints. We also ask commenters to comment on the appropriateness of a fixed 30-day, or other fixed number of days, response period for informal complaints filed against common carriers pursuant to § 1.717 of our rules.

13. We anticipate that many informal consumer complaints will be resolved by the informal process, as is the case under our current common carrier complaint rules. We also recognize that not all informal consumer complaints will be resolved by the company involved to the satisfaction of the consumer. Under our section 208

informal complaint rules for common carriers, Commission staff reviews the complaint and the carrier's response to determine what, if any, additional action is warranted. If the complainant is not satisfied by the carrier's response and the Commission's disposition, he or she may file a formal complaint with the Commission within six months of the carrier's response. If the complainant does not file a timely formal complaint, he or she is deemed to have abandoned the unsatisfied informal complaint. We propose a similar approach for informal consumer complaints involving non-common carriers. Specifically, under our proposal, Commission staff would review the informal complaint and company's response. If deemed necessary, staff would contact the complainant regarding the staff's review and the company's response. If the consumer is not satisfied with the company's response, staff will advise the consumer that it may file a formal complaint within six months of the company's response. Currently, the rules contain no procedures for filing a "formal" complaint in the non-common carrier context. We propose to establish a formal complaint process that is similar to that which applies to common carriers. Under this approach, consumers filing formal complaints against broadcast licensees or other non-common carriers would need to comply with pleading and filing requirements similar to those that apply to formal complaints filed against common carriers. Such complaints would be handled by EB or other relevant bureaus with jurisdiction over such matters. We seek comment on this approach. In particular, we seek comment on what, if any, additional or different pleading or filing requirements should apply to formal consumer complaints against the various types of non-common carriers.

14. As noted above, our experience has been that in many cases, consumers filing complaints against non-common carriers are, in fact, asking the Commission to investigate and take enforcement action. This is particularly true in the broadcast context, where the Act does not authorize the Commission to award damages to the complainant. We note, however, that the Commission has declined to assess forfeitures in formal complaint proceedings, but rather has initiated separate forfeiture proceedings where it believed that a common carrier's violation warranted assessment of a forfeiture. Such enforcement proceedings involve discretionary action by the Commission where the subject is a party, but not the complainant. We propose to follow this

approach in the non-common carrier context as well. We believe this approach takes into account that the complaint process and the forfeiture process are two distinct processes, each subject to different types of judicial scrutiny. In addition, the Enforcement Bureau may initiate investigations, on its own motion, and take or recommend enforcement actions where, for example, informal consumer complaints received show a possible pattern of rule violations by a particular non-common carrier or an egregious individual violation against a consumer.

15. We also seek comment on whether to handle informal consumer complaints concerning interference to home electronic equipment using this proposed process. We propose not to forward informal consumer complaints involving such interference to the companies because our experience has shown that interference to home electronic equipment can occur from either a legal or illegal operation, and the mere fact that a consumer may be experiencing interference, in and of itself, is not sufficient to allege a violation of our rules. Where, however, a consumer does provide sufficient information that the interference is the result of a violation, Commission staff will process the complaint under the informal complaint process. As in other areas, if a complainant is not satisfied, it may file a formal complaint with EB. And, of course, EB would initiate independent enforcement action where appropriate. We seek comment on these proposals.

16. We invite comment on whether we should establish any time limit for the filing of an informal complaint under the proposed rules. We note that section 415(b) of the Act limits the filing of certain claims against common carriers for money damages to "within two years from the time the cause of action accrues, and not after * * *" We recognize that the affected entities need to be protected from being exposed indefinitely to stale complaints. On the other hand, we recognize that consumers should have maximum flexibility in electing to pursue informal complaints, especially in the case of repeated infractions on the part of an entity. We seek comment on this issue, on the relationship of section 415 to our informal complaint authority under the proposed rules, and on the need for regulatory parity in this respect as among the various entities regulated by the Commission.

17. We also seek comment on how the Commission can best address the issues raised above to better serve consumers. We ask the parties to comment on how

the Commission can better coordinate its complaint process with the processes used by state and local governments. What efforts can be made to share information gained by this coordination? What other procedural assistance should the Commission offer to consumers, as well as state and local governments?

18. We also seek comment on a specific proposal contained in the *Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to be Followed When Informal Complaints Are Filed Against Common Carriers, CC Docket No. 94-92, Notice of Proposed Rulemaking* (59 FR 51538, October 12, 1994) relating to a complainant's right to file a formal section 208 complaint based on an unsatisfied informal section 208 complaint. Section 1.718 of the common carrier complaint rules provides that a complainant that is not satisfied with a carrier's resolution of an informal section 208 complaint must file a formal complaint within six months of the carrier's report in order to continue prosecution of the complaint and to continue to use the filing date of the informal complaint for statute of limitation purposes. The filing of an informal complaint is in no way a prerequisite to filing a formal complaint. In addition, the institution of the proposed informal complaint process does not supplant the formal complaint process. Previously, the Commission proposed to revise §§ 1.718 to provide that in all cases involving an unsatisfied informal section 208 complaint, the period of time allowed for filing a formal complaint that will relate back to the filing date of the informal complaint is sixty days after the staff has informed the parties in writing of its disposition of the informal complaint. Interested parties are asked to comment on whether the proposed rule would pose any hardship or disadvantage for either complainants or defendant carriers.

19. We propose to amend the pertinent provisions in the current rules that designate informal complaints as records that are routinely available for public inspection. Because informal complaint records include personal information relating to consumers such as their names, addresses, and phone numbers, we propose to no longer make them routinely available for public inspection. Such personal information is subject to protection from disclosure under the Privacy Act and is not generally available to the public. To comply with the requirements of the Privacy Act, informal complaint records that are subject to disclosure pursuant to requests for information under the

Freedom of Information Act, and other requests for such information will be sanitized to remove all personal, identifying information relating to the complainants prior to the records being disclosed. Such personal information is not generally available to the public. We anticipate that the implementation of this proposal will be in the interests of the consumers and in keeping with the letter and intent of the Privacy Act. Moreover, we must ensure that our rules facilitate the submission of relevant information by consumers and defendant companies without fear of dissemination of information that is confidential or proprietary. We encourage interested parties to address whether our existing rules governing the disclosure of confidential or proprietary materials are adequate to protect the interests of consumers and regulated companies or whether additional or different safeguards are needed. If a formal complaint process is established for non-common carrier complaints as discussed in paragraph above, however, or if EB or another relevant bureau independently begins an investigation or enforcement proceeding, the informal complaints triggering the formal complaint or investigation would be made routinely available to the public unless confidential treatment was specifically requested at the time of filing. The Commission's Privacy Act System of Records lists such disclosure. Conceivably, however, consumers who file underlying informal complaints that are the subject of the investigation or enforcement proceeding may request confidentiality. Personal information on such consumers will be subject to protection under the Privacy Act and will not be disclosed.

20. We propose that informal complaints filed pursuant to these new rules shall be deemed "exempt" proceedings, as is the case with informal complaints filed pursuant to our common carrier complaint rules under section 208 of the Act. This exempt designation will allow the Commission and its staff to meet or otherwise communicate with either the complaining consumer or the regulated entity, as well as with third parties, on an *ex parte* basis to discuss matters pertaining to the complaint and related compliance issues. This exempt classification has proven to be highly beneficial to consumers, regulated common carriers and the Commission in terms of facilitating the identification and exchange of information and ideas needed to resolve section 208 informal complaints and related compliance issues. We seek comment on whether

this is the appropriate classification of informal complaints, and on the potential effect of this classification on complainants and defendant companies. On the other hand, if a formal complaint process is established as discussed above, then these complaint proceedings will be treated as restricted for the purposes of the *ex parte* rules.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information 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 NPRM; OMB notification of action is due June 17, 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: In the Matter of Establishing Rules Governing Procedures To Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit; not-for-profit institutions; and/or state, local or tribal governments.

Number of Respondents: 200,000.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: On occasion.

Total Annual Burden: 100,000 hours.

Total Annual Costs: \$1,000,000.

Needs and Uses: The Commission will use the information to resolve consumer complaints and identify trends in the violation of Commission rules.

III. Procedural Matters

A. Ex Parte Presentations

21. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda

period, provided that they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206 (a).

B. Initial Regulatory Flexibility Act Analysis

22. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

1. Need for and Objectives of the Proposed Rules

23. Since the passing of the Telecommunications Act of 1996, the convergence of competition and technology has resulted in more opportunities for consumers, but also more areas of confusion and concern. We initiate this proceeding to seek comment on proposals to establish a unified, streamlined process for the intake and resolution of complaints filed by consumers. We expect such a process to promote maximum compliance with both the requirements of the Communications Act of 1934, as amended (the Act), and the Commission's implementing rules and orders.

24. The Commission has previously emphasized that our consumer complaint mechanisms are a principal vehicle for achieving compliance and promoting competition. We are concerned, however, that our existing complaint measures require consumers to navigate an array of rule provisions and disparate procedures in order to file complaints. Because the Commission relies on the informal complaint process to protect consumers, including small businesses, the process must expand in order to be accessible and efficient. We propose to establish an informal consumer complaint mechanism that emphasizes ease of filing by consumers and voluntary cooperative efforts by consumers and affected companies to resolve their differences. Our intention

is to create a process that is both simple and effective.

2. Legal Basis

25. The Commission has authority to process informal complaints filed against common carriers pursuant to section 208 of the Act and §§ 1.716 through 1.718 of the Commission's rules. Further, the Commission has the authority to extend the informal complaint process to other entities regulated by the Commission under sections 1, 2, and 4(i) and (j) of the Act.

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

26. 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. 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 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).

27. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. 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 proposed rules.

28. *Cable Services or Systems.* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million

or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.

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

30. The Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, we estimate that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals 1,450. We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

31. *Other Pay Services.* Other pay television services are also classified under the North American Industry Classification System (NAICS) codes 51321 and 51322, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint

distribution systems (MDS), satellite master antenna systems (SMATV), and subscription television services.

32. *Common Carrier Services and Related Entities.* The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,822 interstate service providers. These providers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

33. We have included small incumbent local exchange carriers (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." 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.

34. *Total Number of Telephone Companies Affected.* 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, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by these proposed rules.

35. *Wireline Carriers and Service Providers.* The SBA has developed a

definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) 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. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by these proposed rules.

36. *Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPS), interexchange carriers (IXCs), 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 that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the TRS. According to our most recent data, there are 1,395 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 the SBA's definition. Therefore, we estimate that there are fewer than 1,395 small entity LECs or small incumbent LECs, 349 CAPs, 204 IXCs,

21 OSPs, 758 payphone providers, and 541 resellers that may be affected by these proposed rules.

37. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers 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." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operations because any such dominance is not "national" in scope.

38. *International Services.* The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is one with \$11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$10.0 million. The Census report does not provide more precise data.

39. *International Broadcast Stations.* Commission records show that there are 17 international high frequency broadcast station authorizations. We do not request nor do we collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition.

40. *International Public Fixed Radio (Public and Control Stations).* There is one licensee in this service subject to the payment of regulatory fees to the Commission, and the licensee does not constitute a small business under the SBA definition.

41. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor do we collect annual revenue information, and are unable to estimate the number of the fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

42. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 2,784 earth station

authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor do we collect annual revenue information, and are unable to estimate the number of fixed satellite small transmit/receive earth stations that would constitute a small business under the SBA definition.

43. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 492 current VSAT System authorizations. We do not request nor do we collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

44. *Mobile Satellite Earth Stations.* There are 15 licensees. We do not request nor do we collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

45. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor do we collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

46. *Space Stations (Geostationary).* There are presently 66 Geostationary Space Station authorizations. We do not request nor do we collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

47. *Space Stations (Non-Geostationary).* There are presently six Non-Geostationary Space Station authorizations, of which only three systems are operational. We do not request nor do we collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

48. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with \$11.0 million or less in annual receipts. Currently, there are nine DBS authorizations, though there are only

two DBS companies in operation at this time. We do not request nor do we collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

49. *Commercial Radio and Television Services.* The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees. The SBA defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,663 operating television broadcasting stations in the nation as of September 30, 2000. For 1992, the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.

50. Additionally, the SBA defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992. Official Commission records indicate that a total of 11,334 individual radio stations were operating in 1992. As of September 30, 2000, Commission records indicate that a total of 12,717 radio stations were operating, of which 8,032 were FM stations. The proposed rules may affect an estimated

total of 1,663 television stations, approximately 1,281 of which are considered small businesses. The proposed rules will also affect an estimated total of 12,717 radio stations, approximately 12,209 of which are small businesses. These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,366 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

51. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.

52. The Commission estimates that there are approximately 2,700 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.

53. *Multipoint Distribution Service (MDS).* This service involves a variety of transmitters, which are used to relay programming to the home or office. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million. The SBA has approved this

definition of a small entity in the context of MDS auctions. These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business. There are approximately 2,000 MDS/MMDS/LMDS stations currently licensed. We conclude that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

54. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities specific 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 (wireless) company employing no more than 1,500 persons. According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms that 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 *Telecommunications Reporting Worksheets* data, 806 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and specialized mobile radio telephony carriers, 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 wireless service providers that may be affected by these proposed rules.

55. *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 (Wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons. According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. If this general ratio continues in 2001 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

56. *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*, 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 do not exceed \$3 million for the preceding three years. The SBA has approved these definitions.

Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

57. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band 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. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

58. *Private and Common Carrier Paging.* In the *Paging 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 licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven (57) 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 *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" 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 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 172 small paging carriers that may be affected by these proposed rules. We estimate that

the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

59. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these regulations defining "small entity" in the context of broadband PCS auctions. 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. An additional classification for "very small business" was added for C Block and is defined as "an entity that together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than forty million dollars for the preceding three years." The SBA approved this definition." 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.

60. *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*. 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. The SBA has approved these definitions. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (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.

61. *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 (wireless) 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.

62. *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 (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

63. *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 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small businesses. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

64. These proposed rules apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. 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 IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

65. *Private Land Mobile Radio (PLMR)*. PLMR systems serve an essential role in a range of industrial,

business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

66. The Commission is unable at this time to estimate the number of small businesses that could be impacted by the proposed rules. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

67. *Amateur Radio Service*. We estimate that 8,000 applicants will apply for vanity call signs in FY 2001. These licensees are presumed to be individuals, and therefore not small entities.

68. *Aviation and Marine Radio Service*. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. The applicable definition of small entity is the definition under the SBA rules for radiotelephone (wireless) communications.

69. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of this IRFA, we estimate that there may be at least 712,000 potential licensees that are individuals or are small entities, as the SBA defines that term.

70. *Fixed Microwave Services*. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a

small business with respect to microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—*i.e.*, an entity with no more than 1,500 persons. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

71. *Public Safety Radio Services*. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As indicated earlier, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.

72. *Personal Radio Services*. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS). Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition.

73. *Offshore Radiotelephone Service*. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

74. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven

winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

75. *39 GHz Service.* The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. 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. The SBA has approved these regulations defining "small entity" in the context of 39 GHz auctions. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

76. *Local Multipoint Distribution Service.* The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these regulations defining "small entity" in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 small entity winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

77. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding

any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses, which would be affected by these proposed rules.

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

78. With certain exceptions, the Commission's informal complaint process will apply to all Commission licensees and regulatees. The compliance requirements imposed by the proposed rules on these entities are three-fold. First, entities against which a complaint is made must acknowledge receipt of the complaint. Second, these entities are expected to resolve the consumer complaints if possible; and third, the entity must advise the Commission that resolution of such complaint has either been attempted and has been unsuccessful or has been achieved. Entities will be required to respond within a prescribed time frame. All steps of the informal complaint process are completed by non-professional staff. Therefore, we expect that the cost for addressing consumer complaints per complaint will be no greater for small entities than it will be for large ones. Failure to resolve an informal complaint may lead to the filing of a formal complaint by the consumer and possible enforcement measures exercised by the Commission.

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

79. The RFA requires an agency to describe any significant, specifically small business, 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.

80. As described in the NPRM, we are attempting to streamline our complaint procedures to make the same requirements applicable to all licensees and regulatees. One of the alternatives we are considering is in keeping with alternative (1) above and is the establishment of a different time for responses to complaints involving small businesses. As set forth above, we are seeking comments on this alternative, including the issue of whether a different standard should be applied to different industries. Our expectation is that the establishment of an informal complaint process will reduce costs overall for small entities, by minimizing the need for extensive legal or accounting services that might be necessary in a formal complaint process.

81. In addition, this item contemplates that small entities may choose to avail themselves of the informal complaint process when in problematic situations. We are considering an alternative for small businesses that would allow such businesses, using the informal complaint process, additional time to file formal complaints if necessary. We emphasize that this informal complaint process is entirely voluntary and imposes no mandatory burden on small entities that use this process. We seek additional comment on this alternative in the NPRM.

82. Furthermore, we seek comment on other alternatives or suggestions that might simplify our informal complaint procedures or otherwise benefit small entities, while remaining consistent with our purposes in this proceeding.

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

83. None.

A. Comment Due Dates and Filing Procedures

84. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before May 16, 2002, and reply comments on or before May 31, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

85. 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.

86. 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 Twelfth Street, SW., TW-A325, Washington, DC 20554.

87. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Renee Owusu, Consumer Information Bureau, 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 97 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 CI Docket No. 02-

32), 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 CY-B402, Washington, DC 20554.

88. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin of the Consumer Information Bureau at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. The NPRM and the proposed rules can also be downloaded from <http://www.fcc.gov>.

89. Written comments by the public on the proposed information collections are due May 16, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before June 17, 2002. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley 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, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to jthornto@mb.eop.gov.

IV. Ordering Clauses

90. Pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 208, 303(r), and 403 of the Communications Act of 1934, as amended, the Notice of Proposed Rulemaking is adopted.

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

List of Subjects in 47 CFR Part 1

Commission practice and procedure.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0 and 1 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.453 is amended by revising paragraph (a)(2)(ii)(F) to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(F) All formal complaints against common carriers filed under §§ 1.711 through 1.735 of this chapter, all documents filed in connection therewith and all communications related thereto.

* * * * *

3. Section 0.457 is amended by adding paragraph (f)(4) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(f) * * *

(4) Informal complaints filed under §§ 1.711 through 1.735 of this chapter, all documents filed in connection therewith, and all communications related thereto.

* * * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(l), 154(j), 155, 225, 303(r), 309 and 325(e).

5. Add § 1.715 to subpart E following the undesignated center heading entitled "Informal Complaints" to read as follows:

§ 1.715 Purpose and scope.

(a) The purpose of these rules is to establish a unified, streamlined process for the intake and resolution of complaints filed by consumers in order to promote maximum compliance with the requirements of the Communications Act of 1934, as amended, and our implementing rules and orders.

(b) These rules shall apply to all consumer complaints filed against any entities regulated by the Commission, except common carriers. Complaints against common carriers should be filed pursuant to §§ 1.716 through 1.718. The requirements contained in this subpart are not intended to preempt the adoption or enforcement of other rules

established by the Commission, or any other governmental entity, as remedies in specific areas.

(c) A consumer complaint may be transmitted to the Commission by any reasonable means, including letter, facsimile transmission, telephone (voice and TTY), Internet e-mail, and audio or video cassette recording. The complaint should contain:

(1) The name and address of the complainant;

(2) The name and address of the company against which the complaint is being made;

(3) Details about the product or service about which the complaint is being made;

(4) A statement of facts supporting the complainant's allegation that the defendant company has acted or failed to act as required by the Act or the Commission's rules or orders;

(5) If the complainant is disputing a rate or charge assessed by the defendant company, a copy of the complainant's bill setting forth the rate or charge in dispute; and

(6) The specific relief or satisfaction being sought by the complainant.

(d) The Commission will forward consumer complaints to the appropriate regulated entity for investigation. The regulated entity will, within 30 days, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the entity's report or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant. In all other cases, the Commission will contact the complainant regarding its review and disposition of the matters raised.

[FR Doc. 02-8795 Filed 4-15-02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH80

Endangered and Threatened Wildlife and Plants; Amendment to Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to amend our

existing regulations for establishing and administering manatee protection areas. We propose to except specific activities that will not result in take of manatees from the regulations within the Barge Canal manatee protection area in Brevard County, Florida. We also propose to establish a mechanism by which persons wishing to engage in specific activities within the Barge Canal manatee protection area may request and, as appropriate, receive a determination from us that the proposed activity will not result in take of manatees and is, therefore, excepted from the restrictions imposed by the designation.

DATES: We will consider comments on the proposed rule that are received by June 17, 2002. We must receive requests for public hearings by May 31, 2002.

ADDRESSES: If you wish to comment, you may submit written comments and information to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216. Also, you may fax your comments to 904/232-2404.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8:00 a.m. to 4:30 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, or Cameron Shaw (*see* **ADDRESSES** section), telephone 904/232-2580.

SUPPLEMENTARY INFORMATION: The authority to establish protection areas for the Florida manatee is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407) (MMPA), and is implemented in 50 CFR, part 17, subpart J. We may, by regulation, establish manatee protection areas whenever substantial evidence shows that such establishment is necessary to prevent the taking of one or more manatees.

Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct (16 U.S.C. 1532 (18)). Harm means an act that actually kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under the ESA, harass means an intentional or negligent act or omission that creates

the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3).

Section 104 of the MMPA sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment is defined at section 3(18) of the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362).

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles and dredging and filling activities.

We have used manatee protection areas to limit human disturbance around important warm water manatee aggregation sites and to limit vessel speeds in waterways where it has been shown that manatee/vessel collisions have resulted in the injury and death of manatees. We have established seven manatee sanctuaries in the Crystal River area of Citrus County, Florida, (50 CFR 17.108), and on Aug. 10, 2001, we proposed establishing 16 additional manatee protection areas throughout peninsular Florida (66 FR 42318). On