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### Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Dated: March 16, 2004.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 04-6563 Filed 3-23-04; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 54, 61, and 69

[CC Docket Nos. 00-256 and 96-45; FCC 04-31]

### Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** By this *Second Further Notice of Proposed Rulemaking (NPRM)*, the Commission initiates an NPRM seeking comment on two specific plans that propose establishing optional alternative regulation mechanisms for rate-of-return carriers. In conjunction with the consideration of those alternative regulation proposals, the Commission also seeks comment on modifications that would permit a rate-of-return carrier to adopt an alternative regulation plan for some study areas, while retaining rate-of-return regulation for other of its study areas.

**DATES:** Comments are due on or before April 23, 2004. Written comments by the public on the proposed information collections are due on or before April 23, 2004. Reply comments are due on or before May 10, 2004. Written reply comments by the public on the proposed information collections are due on or before May 10, 2004. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before May 24, 2004.

**ADDRESSES:** All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW-A325, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein must be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 Twelfth Street SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kim A.

Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street NW., Washington, DC 20503, or via the Internet to *Kim\_A.Johnson@omb.eop.gov*.

### FOR FURTHER INFORMATION CONTACT:

Douglas Slotten, Wireline Competition Bureau, Pricing Policy Division, 202-418-1572, or Ted Burmeister, Wireline Competition Bureau, Telecommunications Access Policy Division, 202-418-7389. 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 *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (NPRM) in CC Docket Nos. 96-45 and 00-256, adopted on February 12, 2004, and released on February 26, 2004. The complete text of this NPRM is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is also available on the Commission's Internet site at *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at 202-418-7426 or TTY 202-418-7365. The complete text of the NPRM may be purchased from the Commission's duplicating contractor, Qualex International, Room CY-B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or e-mail at *qualexint@aol.com*.

### Synopsis of Notice of Proposed Rulemaking

1. The Commission seeks additional comment on incentive regulation and on the all-or-nothing rule. CenturyTel, Inc. (CenturyTel) and a group of carriers (ALLTEL Communications, Inc. (ALLTEL), Madison River Communications, LLC (Madison River), and TDS Telecommunications Corporation (TDS)) filed separate alternative regulation proposals as *ex parte* filings in response to the 2001 notice. These two proposals each contain a feature that would permit a rate-of-return carrier to elect to move some, but not all, of its study areas to incentive regulation.

2. CenturyTel proposes a five-year plan that would modify the Commission's price cap rules to permit rate-of-return carriers to elect a modified

form of price cap regulation on a study area basis. The plan would eliminate the all-or-nothing rules contained in § 61.41(c)(2) and (3) so that rate-of-return carriers that acquire price cap exchanges need not convert to price caps at the holding company level. CenturyTel also proposes that the Commission eliminate § 61.41(b) so that rate-of-return carriers can elect price cap regulation on a study area basis.

3. Under CenturyTel's proposal, average traffic-sensitive (ATS) target rates would be established. These target traffic-sensitive rates in electing study areas would depend on line density at the holding company level, excluding lines acquired from mandatory price cap carriers. The plan would set the target rates at the lesser of: (1) \$0.0125 per minute, or the actual rate for carriers with a line density of less than 15 lines per square mile; or (2) \$0.0095 per minute, or the actual rate for carriers with a line density of at least 15, but less than 19, lines per square mile; or (3) the current levels up to a maximum ATS rate of \$0.0095 per minute for carriers with a line density higher than 19 lines per square mile for carriers newly electing the plan. CenturyTel would have the Commission set the productivity factor, or X-Factor, at GDP-PI for carriers electing price caps under this plan. The plan would contain a low-end adjustment set at 10.25 percent to ensure reasonable earnings opportunities. Finally, the CenturyTel plan would permit a rate-of-return carrier to elect price caps for some study areas and remove those study areas from the National Exchange Carrier Association (NECA) pools, while leaving its other study areas in the NECA pools subject to rate-of-return regulation. CenturyTel proposes that rate-of-return carriers be able to choose alternative regulation at any annual or semi-annual tariff filing to be effective for the remainder of the five-year plan.

4. CenturyTel's plan would permit an electing rate-of-return carrier to move its rate to a target rate on a revenue-neutral basis by allowing a rate-of-return carrier to recover the difference between the target rate and its existing revenue requirement through an ATS additive to ICLS; the plan would freeze the ATS additive on a study area basis for the duration of the plan. The plan would also freeze Interstate Common Line Support (ICLS) and Long Term Support (LTS) on a per-line basis for electing carriers for the plan's duration, as well as freezing Local Switching Support (LSS) on a study area basis for the plan's duration. The \$650 million fund of interstate CALLS support would not be available to the new price cap carriers.

High-cost loop support would be frozen on a per-line basis, subject to adjustment for GDP-CPI.

5. The Rate-of-Return Carrier Tariff Option, filed by AllTel, Madison River, and TDS, would extend the current § 61.39 small carrier tariff option to all rate-of-return carriers, not just those serving 50,000 or fewer lines. Under this option, electing rate-of-return carriers would file tariffs for a two-year period, with rates based on historical costs and demand. Initial traffic-sensitive rates would be established using costs and demand for the previous calendar year, while rates for succeeding tariff periods would be based on the actual costs and demand of the two preceding years. Thus, efficiencies achieved during the two-year tariff period would not be reflected in the form of rates until the next two-year tariff period. Electing rate-of-return carriers would develop Subscriber Line Charges (SLCs) and other end user charges based on historical costs, just as they do for traffic-sensitive charges.

6. The Rate-of-Return Carrier Tariff Option would initially establish per-line, common line support at the historical level of costs recovered through universal service divided by the historical level of access lines. Specifically, the historical interstate common line revenue requirement, including line port and Transport Interconnection Charge (TIC) reallocations, would be reduced by SLC revenues, the Special Access Surcharge, the Line Port Costs in Excess of Basic Analog Service, and universal service funding assessments recovered from end users. The proposal would reassess the level of support every two years, based on the cost and demand levels during the previous two-year period. Finally, the proposal would not alter the manner in which LSS and high-cost loop support is calculated or obtained.

7. With the NPRM, the Commission takes a more focused look at the issues surrounding alternative regulation plans for rate-of-return carriers based on the two proposals presented to the Commission. In conjunction with that review, the Commission addresses the issues surrounding the retention or modification of the all-or-nothing rule as it relates to the ability of rate-of-return carriers to elect to adopt an alternative regulation plan for only some of its study areas. The Commission builds upon the record of its earlier notice as it proceeds with its evaluation of alternative regulation opportunities and the all-or-nothing rule.

8. The two plans each are premised on a carriers ability to elect alternative

regulation on a study area basis, rather than at the holding company level, and thus are dependent on modification of the all-or-nothing rule. The Commission tentatively concludes that any alternative regulation plan it adopts will be optional on the part of the rate-of-return carrier and will permit a rate-of-return carrier to elect participation in the alternative plan by study area. The Commissions experience over the years in attempting to develop incentive regulation for smaller companies has led it to the view that it would not be possible to devise a plan suitable for mandatory imposition on all rate-of-return carriers. Likewise, it appears that most rate-of-return holding company groups are composed of very diverse operating companies, and that such companies will not be able to elect incentive regulation if they must do it on an all-or-nothing basis. The Commission seeks comment on these tentative conclusions, but asks that parties evaluate the plans as though they were going to be implemented on a study-area basis.

9. The Commission invites parties to comment on the two alternative regulation proposals in the record and asks whether one, both, or neither of the plans should be available. Parties may propose modifications to the two proposals. In doing so, they should be guided by the general inquiries that the Commission made in the 2001 *MAG NPRM* with respect to the evaluation of both alternative plans and the modification of the all-or-nothing rule. The Commission also asks parties to address the implications of CenturyTels proposed five-year time frame on the resolution of long-term access issues raised in the intercarrier compensation proceeding.

10. The CenturyTel plan essentially freezes access rates by proposing a productivity factor equal to GDP-PI, while the Rate-of-Return Carrier Tariff Option would adjust rates every two years to reflect any efficiency gains. The Commission invites parties to comment on whether these proposals would produce rates that would be just and reasonable, as required by section 201(b) of the Act, and not unreasonably discriminatory, as required by section 202(a) of the Act. Parties are asked to address whether the CenturyTel plan should contain a productivity factor other than GDP-PI. Parties proposing such productivity factors are asked to explain in detail how such factors can be accurately calculated for the diverse group of carriers currently subject to rate-of-return regulation. The use of GDP-PI would mean that lower traffic-sensitive rates resulting from traffic

growth would no longer occur as they would under rate-of-return regulation. Parties should address whether, as an alternative approach to an X-Factor, a G-factor should be used. A G-factor would adjust the rate cap for rates of traffic-sensitive services based on the rate of growth of the relevant traffic-sensitive measure, e.g., minutes. If so, should it be set based on historical data, or based on projections for the next tariff period? Alternatively, should the CenturyTel plan include a sharing mechanism if a productivity factor higher than that proposed, or a G-factor, is not adopted? Parties should address the need for, and level of, a low-end adjustment factor and how its level should be set in relation to any productivity factor, G-factor, or sharing requirement that might be adopted. Finally, the Commission invites parties to discuss the implications for the Commission's goals if CenturyTel were the only carrier to elect its proposed form of alternative regulation.

11. Parties are also invited to comment on the effect that each plan will have on the incentives of electing rate-of-return carriers to invest in, and maintain, their exchange access facilities and to ensure that service quality is not degraded. The Commission asks parties to evaluate the differences between the two plans on this score and to address what additional steps, if any, would be necessary to ensure that service quality does not decline in the face of any incentive to increase profits. The Commission also asks parties to address the effects that the option to elect by study area and at a time of the rate-of-return carriers choosing would have on these investment and service quality considerations.

12. Parties should also address the universal service aspects of the two plans. To what extent is either the CenturyTel plan or the Rate-of-Return Carrier Tariff Option likely to increase the size of the universal service fund, and how would support levels change over time? What effect, if any, would adoption of either plan have on the overall sustainability of universal service? What incentives would be created if, as CenturyTel proposes, high-cost loop support is fixed on a per-line basis and grows by GDP-PI, without regard to investment in loop facilities? With respect to either proposal, commenters should provide a detailed explanation as to how support should be calculated and the administrative burdens entailed. Commenters should also address how the proposal would serve the principles of section 254 of the Act.

13. The Commission tentatively concludes that the opportunity to elect alternative regulation on a study area basis should be available only to holding company groups in which all non-average schedule companies file their own cost-based tariffs. The Commission is especially concerned about the ability of any NECA internal process, or formula, to insulate the remaining pool members from the risk that may be introduced by a carrier's adoption of an alternative regulation plan. It will also be important to consider the extent to which pool participation makes cost shifting more difficult to detect. Parties should also address what modifications in tariff cost support rules and/or reporting requirements would be necessary under two scenarios: (1) The Commission were to require holding companies electing alternative regulation to remove all study areas from the NECA pools, and (2) the Commission were to permit some or all study areas of rate-of-return carriers electing alternative regulation to participate in the NECA pools.

14. The Commission tentatively concludes that existing accounting and regulatory processes should permit parties and the Commission to detect cost shifting by the rate-of-return carriers that file cost-based access tariffs. Interexchange carriers (IXCs) and competitors argue that the incentive for rate-of-return carriers to shift costs continues to exist and that existing processes are inadequate to check such cost shifting. The Commission notes that this debate has been joined in very general terms, with little in the way of specific detail. The Commission asks parties to identify the most significant means by which a rate-of-return carrier could shift costs from a study area electing an alternative regulation plan to a study area subject to rate-of-return regulation. Parties should also describe why existing procedures will, or will not, permit the cost shift to be identified and quantified. To the extent parties argue that existing processes are inadequate, the Commission invites them to identify with specificity what additional reporting or regulatory procedures would allow the parties and the Commission to identify and quantify cost shifts.

15. The debate over incentive regulation is often clouded by uncertainty as to whether the CALLS plan contemplated that additional study areas would enter that plan during its five-year term. Three years have passed and no rate-of-return carrier has sought entry. To eliminate the uncertainty, the Commission tentatively concludes that the CALLS plan was not designed to be

open to new carriers or study areas. The CALLS plan began as a voluntarily negotiated agreement among price cap carriers and certain IXCs that addressed pricing and universal service concerns as a package, without consideration of possible participation by carriers that were then under rate-of-return regulation. That CALLS was not intended to accommodate additional entry is most clearly indicated by the fact that in adopting the plan, the Commission made no provision for how the universal service component of the CALLS plan would address future expansion to new carriers. The Commission therefore believes the rules should be amended to clarify that new carriers or carrier study areas may not elect this plan. The Commission invites parties to comment on this tentative conclusion.

16. The Commission also tentatively concludes that, whatever final rule it adopts with respect to the election of alternative regulation on a study area basis, that rule should also apply when carriers under different regulatory plans come together by merger or acquisition. This would include those cases in which a price cap carrier acquired a rate-of-return study area, but could not bring it into the CALLS plan, if the Commission adopts its tentative conclusion in the previous paragraph. Thus, if the Commission were to permit rate-of-return carriers to elect alternative regulation by study area, the current ALLETEL/Aliant, Verizon/PRTC, and Valor/Kerrville waivers of the all-or-nothing rule would no longer be necessary. Under this tentative conclusion, affected carriers would continue to receive universal service support through the preexisting support mechanism(s). The Commission seeks comment on this tentative conclusion. Parties opposing this approach should indicate how they would harmonize the interrelated considerations arising from mergers or acquisitions between carriers subject to different regulatory regimes.

### Procedural Matters

#### *Ex Parte Requirements*

17. This proceeding will continue to be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under 47 CFR 1.1206. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is

required. See 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) as well. Interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW., TW-B204, Washington, DC 20554, and serve with one copy: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5-A452, Washington, DC 20554, Attn: Douglas Slotten. Parties shall also serve with one copy: Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 863-2893, [qualexint@aol.com](mailto:qualexint@aol.com).

#### *Paperwork Reduction Act Analysis*

18. The NPRM contains either a proposed or modified information collection. As part of the continuing effort to reduce paperwork burdens, the Commission invites the general public and the OMB to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should address: (1) 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; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

#### *Initial Regulatory Flexibility Act Analysis*

19. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 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 SBA.

20. As required by the RFA, the Commission has prepared this IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM.

#### *Need for, and Objectives of, the Proposed Rules*

21. The Commission continues to explore means of providing incentives for smaller telephone companies to become more efficient and innovative in ways that benefit both rate-of-return carriers and their customers. The NPRM seeks additional comment on two alternative incentive regulation proposals for all rate-of-return carriers, and on the closely related all-or-nothing rule.

22. The alternative incentive regulation plans were filed by CenturyTel (the CenturyTel Plan) and by ALLTEL, Madison River and TDS (the Rate-of-Return Carrier Tariff Option). The CenturyTel Plan proposes to lower traffic-sensitive charges, according to participation on a study area-by-study area basis, to target rates based on specific average traffic-sensitive target rates determined by line density. The CenturyTel Plan would apply an X-Factor equal to GDP-PI. The CenturyTel Plan would convert universal service support to per-line amounts, with ICLS and LSS being frozen for the five-year duration of the proposed plan and high-cost loop support being frozen subject to adjustment for GDP-CPI. Finally, CenturyTel proposes that carriers should be allowed to take certain study areas out of the NECA pools and into alternative regulation, while leaving other study areas in the pools, subject to rate-of-return regulation. The Rate-of-Return Carrier Tariff Option would allow all rate-of-return carriers (not just those serving 50,000 or fewer lines) to elect to adopt a revised § 61.39 approach under which they would file access tariffs every two years based on the previous two years' historical cost and demand data. The Rate-of-Return Carrier Tariff Option would provide a participating company with a per-line ICLS based on two years of historical data. Finally, both plans would make participation in the alternative

regulation plan optional, and would allow election by study area.

23. The NPRM tentatively concludes that any alternative regulation plan that the Commission may adopt should be optional on the part of the rate-of-return carrier, with participation through election on a study area basis. Additionally, such participation should be available only to holding company groups in which all non-average schedule companies file their own cost-based tariffs. Among the issues on which the NPRM seeks comment are whether the two plans will produce rates that are just and reasonable and not unreasonably discriminatory for all entities, including small entities. The NPRM also asks whether the CenturyTel Plan should contain a productivity factor other than GDP-PI, whether a G-factor should be used as an alternative approach to an X-factor, and whether it should be based on historical data or on projections for the next tariff period. In addition, the NPRM asks about the effect each plan will have on rate-of-return carriers' investment and maintenance of their exchange access facilities, whether service quality will be degraded, and whether the universal service fund will be increased.

24. The NPRM also tentatively concludes that existing accounting and regulatory processes should equip parties and the Commission to detect cost-shifting by the rate-of-return carriers that file cost-based access tariffs. Nonetheless, the Commission asks commenters to identify the ways that a rate-of-return carrier could shift costs from a study area electing an alternative regulation plan to a study area subject to rate-of-return regulation. The Commission also asks commenters to identify what additional reporting or regulatory procedures would help detect and prevent such cost shifting. The NPRM tentatively concludes that the rules should be amended to indicate that new carriers or carrier study areas may not elect the CALLS plan because it was not designed to be open to new carriers or study areas. Finally, the Commission also tentatively concludes that the option to elect alternative regulation on a study area basis, if adopted, should also be available when carriers under different regulatory plans come together by merger or acquisition.

#### *Legal Basis*

25. This rulemaking action is supported by sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended.

*Description and Estimate of the Number of Small Entities to Which the Notice 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 rules proposed herein. In this section, the Commission further describes and estimates the number of small entity licensees and regulatees that may also be directly affected by proposals contained in this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, the commission discusses the total estimated numbers of small businesses that might be affected by its actions.

27. The commission includes small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a wired telecommunications carrier 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. The Commission therefore includes small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

28. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under

this size standard, the majority of firms can be considered small.

29. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the proposed rules and policies.

30. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the proposed rules and policies.

31. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications

Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the proposed rules and policies.

32. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 companies reported that they were engaged in the provision of operator services. Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the proposed rules and policies.

33. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 761 companies reported that they were engaged in the provision of payphone services. Of these 761 companies, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the proposed rules and policies.

34. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more

than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the proposed rules and policies.

35. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 92 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these 92 companies, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the proposed rules and policies.

36. *Paging.* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

37. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

38. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks 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 \$40 million or less 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." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards 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 percent 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. 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.

Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

39. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure

meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard 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 small business size standards. 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 actions. 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 analysis, 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.

40. *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 small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000

employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

41. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is 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 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 small business size standards. 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.

42. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years. The SBA has approved these size standards. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than \$40 million in each of the three previous calendar years, or that had revenues of no more than \$15 million in each of the previous calendar years. These bidding credits apply to SMR providers in the 800 MHz and 900

MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does 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. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

43. *Private and Common Carrier Paging.* In the *Paging Third Report and Order*, the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is 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 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 size standards. 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 companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 471 carriers reported

that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

44. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, the Commission adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. 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 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 nine 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.

45. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the proposed rules and policies.

46. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.

There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

47. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. 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 its evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

48. *Fixed Microwave Services.* Fixed 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 created a size standard for a small business specifically with respect to fixed microwave services. For purposes of

this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the proposed rules and policies. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

49. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

50. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. 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. The Commission concludes that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

51. *39 GHz Service.* The Commission created a special small business size

standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. 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. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the proposed rules and policies.

52. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission

tentatively concludes that at least 1,932 licenses are small businesses.

53. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. 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 established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for "very small business" was added 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 small business size standards 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 winning bidders. Based on this information, the Commission concludes that the number of small LMDS licenses consists of 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.

54. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was 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*, the Commission established a small business size standard for 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.

The SBA has approved these size standards. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under the Commission's rules in future auctions of 218–219 MHz spectrum.

55. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

56. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

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

57. The *NPRM* explores options for developing an alternative regulatory structure that would be available to those rate-of-return carriers electing it. It considers the widely varying operating circumstances of rate-of-return carriers, the implications of competitive and intrastate regulatory conditions on the

options available, and the need to facilitate and ensure the deployment of advanced services in rural America. If adopted, alternative regulation may require additional recordkeeping. For example, during CenturyTel's five-year plan, line density averages would have to be reported in order to assess applicable ATS target rates. Furthermore, under the Rate-of-Return Carrier Tariff Option, electing rate-of-return carriers would file tariffs for a two-year period, with rates based on historical costs and demand. The *NPRM* also addresses the continued need for the Commission's all-or-nothing rule, seeking comment on whether repeal or modification of the all-or-nothing rule could involve additional reporting or regulatory procedures to prevent cost shifting.

#### *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

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

59. The two alternative incentive regulation proposals in the *Second NPRM* could have varying positive or negative impacts on small rate-of-return carriers. The proposals involve elective options, so that a small entity should be able to assess the potential impacts as part of its decision-making process. Nonetheless, public comments are welcomed on any modifications to the proposals contained in the *Second NPRM* that would reduce potential adverse impacts on small entities. Specifically, suggestions are sought on different compliance or reporting requirements that would take into account the resources of small entities; and clarification, consolidation, or simplification of compliance and reporting requirements for small entities that would be subject to the rules. What are the relative merits between applying an X-factor, based on GDP-PI or some other productivity factor, and a G-factor, based on growth, as they relate to small entities under the CenturyTel Plan? How can the Commission ensure that

adequate investment and service quality levels are maintained? How would the adoption of an incentive regulation plan affect small carriers, and how would a low-end adjustment affect such plan? How would the adoption of either alternative regulation plan affect universal service? If the Commission should repeal or modify the Commission's all-or-nothing rule, how can it prevent the danger of cost shifting for small carriers? How would the proposals impact NECA pooling from the perspective of small carriers? Comments should be supported by specific economic analysis.

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

60. None.

*Report to the Small Business Administration*

61. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

*Filing of Comments and Reply Comments*

62. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before 30 days and reply comments on or before 45 days of publication of this *NPRM* in the **Federal Register**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs>. 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, U.S. 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](mailto: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. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-

ET) at <http://www.fcc.gov/e-file/email.html>.

63. 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.

64. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

65. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Washington, DC 20554 (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com). In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, 445 12th Street SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street SW., Washington, DC 20554, and will be placed on the Commission's Internet site. For further information, contact Douglas Slotten at (202) 418-1572, or Ted Burmeister at (202) 418-7389.

66. Written comments by the public on the proposed and/or modified information collections are due on the same day as comments on the *NPRM*, i.e., on or before 30 days after publication of the *NPRM* in the **Federal Register**. Written comments must be submitted by OMB on the proposed and/or modified information collections

on or before 60 days after publication of the *NPRM* in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, or via the Internet to [jbherman@fcc.gov](mailto: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 [JThornton@omb.eop.gov](mailto:JThornton@omb.eop.gov).

67. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418-0531, TTY (202) 418-7365, or at [fcc504@fcc.gov](mailto:fcc504@fcc.gov).

68. Pursuant to the authority contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 254, and 403, this *Second Further Notice of Proposed Rulemaking* is adopted.

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

**List of Subjects**

*47 CFR Part 54*

Communications common carriers, Telecommunications, Telephone.

*47 CFR Parts 61 and 69*

Communications common carriers, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-6560 Filed 3-23-04; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 390, 391, 392, 395, and 396**

[Docket No. FMCSA-2000-7174]

RIN 2126-AA53

**Interstate School Bus Safety; Withdrawal**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.