

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211

The proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule is consistent with current agency practice, does not impose new substantive requirements and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 33 CFR Part 207

Navigation (water), Vessels, Water transportation.

Dated: May 19, 2005.

Michael B. White,

Chief, Operations, Directorate of Civil Works.

For the reasons stated above, the Corps proposes to amend 33 CFR part 207 as follows:

PART 207—NAVIGATION REGULATIONS

1. The authority citation for part 207 continues to read as follows:

Authority: 33 U.S.C. 1.

2. Amend § 207.750 by revising paragraph (b)(4) and the note to (b)(5)(i), and adding (b)(7) to read as follows:

§ 207.750 Lake Washington Ship Canal; use, administration and navigation.

* * * * *

(b) * * *

(4) Traffic signal lights. In addition to the lock signal lights described in paragraph (b)(5)(ii) of this section, a red light, and a green light are installed on the west side of the Ballard Bridge, on the east side of the Fremont Bridge, 1,000 feet west of the Montlake Bridge, and 1,000 feet east of the Montlake Bridge, for the guidance of vessels approaching the sections of the canal between Salmon Bay and Lake Union and between Lake Union and Lake Washington, respectively.

(5) * * *

(i) * * *

Note: The term "long blasts" means blasts of four seconds duration, and the term "short blasts" means blasts of one second duration. Signals for the opening of drawbridges are prescribed in 46 CFR Part 117. * * *

(6) * * *

(7) Schedule. The district engineer may, after issuing a public notice and providing a 30-day opportunity for public comment, set (issue) a schedule for the daily lockage of recreational and commercial vessels. Recreational vessels are pleasure boats such as a row, sail, or motorboats used for recreational purposes. Commercial vessels include cargo ships; fishing vessels; and licensed commercial passenger vessels operating on a published schedule or regularly operating in the "for hire" trade. Each schedule and any changes to the schedule will be issued at least 30 days prior to implementation. Prior to issuing any schedule, or any change to the schedule, the district engineer will consider all public comments and will evaluate operational efficiencies, commercial needs, the water situation, recreational use of the locks, and other public interests to determine the need for a change in schedule. The district engineer's representative at the locks shall be the Operations Manager, who shall issue orders and instructions to the lockmaster in charge of the locks. Hereinafter, the term "lockmaster" shall be used to designate the person in immediate charge of the locks at any given time. In case of emergency, and on all routine work in connection with the operation of the locks, the lockmaster shall have authority to take action without waiting for instructions from the Operations Manager.

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[FR Doc. 05-10432 Filed 5-24-05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98-170 and CG Docket No. 04-208; FCC 05-55]

Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on where to draw the line between the Commission's jurisdiction and states' jurisdiction over the billing practices of Commercial Mobile Radio Service (CMRS) and other interstate carriers. In addition, the proposed rules seek comment on how the Commission should define the distinction between mandated and non-mandated charges for truth-in-billing purposes, and how states can be involved in enforcing point of sale disclosure rules the Commission has proposed.

DATES: Comments are due on or before June 24, 2005, and reply comments are due July 25, 2005. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget (OMB) and other interested parties on or before July 25, 2005.

ADDRESSES: You may submit comments, identified by [docket number and/or rulemaking number], by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
• Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/. Follow the instructions for submitting comments.
• People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT:

Michael Jacobs, Consumer & Governmental Affairs Bureau at (202) 418-2512 (voice), or e-mail Michael.Jacobs@fcc.gov. For additional

information concerning the PRA information collection requirements contained in this document, contact Leslie Smith at (202) 418-0217, or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: This Second Further Notice of Proposed Rulemaking (*Second Further Notice*), *Truth-in-Billing and Billing Format*; *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket No. 98-170 and CG Docket No. 04-208, FCC 05-55, contains proposed information collection requirements subject to the PRA of 1995, Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this proceeding.

This is a summary of the Commission's *Second Further Notice*, adopted March 10, 2005, and released March 18, 2005. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- **Paper Filers:** 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 appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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 we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor 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.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This *Second Further Notice* contains proposed information collection requirements. 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 requirements contained in this *Second Further Notice*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due July 25, 2005. 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060-0854.

Title: Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, CC Docket No. 98-170 and CG Docket No. 04-208, FCC 05-55.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5309.

Estimated Time per Response: 49-243 hours per response.

Frequency of Responses: On occasion; Third party disclosure reporting requirement.

Total Annual Burden: 2,335,960 burden hours.

Total Annual Cost: \$0.

Privacy Impact Assessment: No.

Needs and Uses: On March 18, 2005, the Commission released a *Second Further Notice, Truth-in-Billing and Billing Format*; *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, which proposes and seeks comment on measures to enhance the ability of consumers to make informed choices among competitive telecommunications providers. These proposed measures include, among others, carriers separating government mandated charges from other charges on bills, and disclosing the full rate to the consumer at the point of sale before the consumer signs any contract for the carrier's services.

Synopsis

In soliciting comment on the NASUCA Petition, the Commission noted that the NASUCA Petition raised issues implicated in the Commission's Truth-in-Billing proceeding. However, the broader issue of the role of states in regulating billing was addressed primarily in reply comments and *ex parte* submissions, and received only cursory treatment in comments on the NASUCA Petition. Given the importance and complexity of this broader issue, this *Second Further Notice of Proposed Rulemaking* is

appropriate in order to garner as complete and up-to-date a record as possible and invite commenters to refresh the record on any issues from the *Truth-in-Billing Order Further Notice*, published at 64 FR 34499, June 25, 1999, that we have not addressed. In the *Truth-in-Billing Order*, published at 64 FR 34488, June 25, 1999, the Commission required carriers that list charges in separate line items to identify certain of such line item charges through standard industry-wide labels and to provide full, clear and non-misleading descriptions of the nature of the charges. The Commission sought comment on the specific labels that carriers should adopt, while tentatively concluding that such labels will, without unduly burdening carriers, identify adequately the charges and provide consumers with a basis for comparison among carriers. In addition, while declining to formulate standardized descriptions for billed services, the Commission encouraged carriers to develop uniform terminology for such descriptions. The Commission also encouraged industry and consumer groups to consider further whether some categorization of charges would be advisable. Nearly six years after adoption of the *Truth-in-Billing Order*, the record reflects that consumers still experience a tremendous amount of confusion regarding their bills, which inhibits their ability to compare carriers' service and price offerings, in contravention of the pro-competitive framework of the Telecommunications Act of 1996 ("1996 Act"). To help alleviate this situation, consistent with the recommendations of commenters such as the Ohio PUC, the Commission tentatively concludes that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges. The Commission also solicits comment on how it should define the distinction between mandated and non-mandated charges for truth-in-billing purposes. The Commission also encourages commenters to assess the ease or difficulty of administering any proposed distinction between government mandated and non-mandated charges. In the *Truth-in-Billing Further Notice*, the Commission sought comment on how carriers should identify line items that combine two or more federal regulatory charges into a single charge. However, in the *Truth-in-Billing Order*, the Commission also expressed concern that where regulatory-related charges are not broken down into line items, it

facilitates carriers' ability to bury costs in lump figures. In light of these conflicting considerations, as well as the record developed in response to the NASUCA Petition, the Commission now refines its proposal to seek comment on whether it is unreasonable under section 201(b) of the Act to combine federal regulatory charges into a single line item. The Commission also tentatively concludes that it should reverse its prior pronouncement that states may enact and enforce more specific truth-in-billing rules than the Commission's. The Commission solicits comment on this tentative conclusion. In addition, the Commission seeks comment on, if the Commission does adopt this tentative conclusion, whether it should limit the scope of what constitutes "consistent truth-in-billing requirements by the states" under 47 CFR 64.2400(c), eliminate § 64.2400(c) from the Commission's rules altogether, or adopt an enforcement regime where states are permitted to enforce rules developed by the Commission. The Commission believes that limiting state regulation of CMRS and other interstate carriers' billing practices, in favor of a uniform, nationwide, federal regime, will eliminate inconsistent state regulation, making nationwide service less expensive for carriers to provide and lowering the cost of service to consumers. Accordingly, the Commission asks commenters to address the proper boundaries of "other terms and conditions" under section 332(c)(3)(A) of the Act, and generally to delineate what they believe should be the relative roles of the Commission and the states in defining carriers' proper billing practices. The Commission also tentatively concludes that it should adopt point of sale disclosure rules, requiring that the carrier disclose to the consumer the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, before the consumer signs any service contract. Finally, the Commission solicits comment on whether and how to adopt an enforcement regime in which states are permitted to enforce rules developed by the Commission regarding point of sale disclosures. For example, Commission rules against slamming provide that state commissions may elect to administer these slamming rules. In adopting the slamming rules, however, the Commission recognized that not all states have the resources to resolve slamming complaints, or may not choose to take on such primary responsibility for administering them, so the Commission also adopted rules

allowing consumers in those states to file slamming complaints with the Commission. In this regard, the Commission asks whether its slamming rules provide a good model for rules that it may develop for point of sale disclosures. The Commission also asks whether, if it adopts an enforcement regime akin to that in the Commission's slamming rules, it should also establish rules prescribing specific penalty amounts and procedures for point of sale disclosure violations, like the penalty provisions in the Commission's slamming rules? The Commission encourages commenters to address how states can administer the process of any penalty scheme that it establishes.

Initial Regulatory Flexibility Analysis (IRFA)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), (see 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law Number 104–121, Title II, 110 Statute 857 (1996)), the Commission has prepared this present Initial Regulatory Flexibility Analysis (*IRFA*) of the possible significant economic impact on small entities by the policies and rules proposed in this *Second Further Notice*. 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 *Second Further Notice* provided above in section VI (D). The Commission will send a copy of the *Second Further Notice*, including this *IRFA*, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, this *Second Further Notice* and the *IRFA* (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

The Commission determined that significant consumer concerns with the billing practices of wireless and other interstate providers raised in this proceeding, and outstanding issues from the 1999 *Truth-in-Billing Order and Further Notice*, require that the Commission clarify certain aspects of its existing rules and policies affecting billing for telephone service. Consumer confusion over telephone bills inhibits the ability of consumers to compare carriers' price and service offerings, thus undermining the proper functioning of competitive markets for telecommunications services, in contravention of the pro-competitive

framework prescribed by Congress in the 1996 Act. Therefore, the Commission proposes and seeks comment on additional measures to facilitate the ability of telephone consumers to make informed choices among competitive telecommunications service offerings.

In particular, the Commission seeks comment on the distinction between government "mandated" and other charges, and tentatively concludes that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges. The Commission also seeks comment on whether it is unreasonable to combine federal regulatory charges into a single line item, though any commenter who still believes that carriers should be able to combine two or more of these charges into a single charge is welcome to refresh the record on how carriers should identify such line items.

Furthermore, the Commission tentatively concludes that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale, and that such disclosure must occur before the customer signs any contract for the carrier's services.

These proposed rules are designed to discourage misleading billing practices, and thereby aid consumers in understanding their telecommunications bills, and to provide consumers with the tools they need to make informed choices in the market for telecommunications service.

Legal Basis

The legal basis for any action that may be taken pursuant to this *Second Further Notice* is contained in sections 1-4, 201, 202, 206-208, 258, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201, 202, 206-208, 258, 303(r), and 332; § 601(c) of the Telecommunications Act of 1996; and §§ 1.421, 64.2400, and 64.2401 of the Commission's rules, 47 CFR 1.421, 64.2400, and 64.2401.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. (See 5 U.S.C. 603(b)(3)). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and

"small governmental jurisdiction." (See 5 U.S.C. 601(6)). In addition, the term "small business" has the same meaning as the term "small business concern" under § 3 of the Small Business Act. (See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**." Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). (See 15 U.S.C. 632).

The Commission has included small incumbent LECs in this 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 wireline telecommunications business having 1,500 or fewer employees), and "is not dominant in its field of operation." (See 13 CFR 121.201, NAICS code 517110) The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. (See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b)). The Commission therefore has included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a

business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS code 517110) According to the FCC's *Telephone Trends Report* data, 1,310 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. (See FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p. 5-5 (May 2004) (*Telephone Trends Report*). This source uses data that are current as of October 22, 2003). Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

Competitive Local Exchange Carriers and Competitive Access Providers.

Neither the Commission nor the SBA has developed specific small business size standards for providers of competitive local exchange services or competitive access providers (CAPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS code 517110) According to the FCC's *Telephone Trends Report* data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. (See *Telephone Trends Report*, Table 5.3. The data are grouped together in the *Telephone Trends Report*). Of these 563 companies, an estimated 472 have 1,500 or fewer employees, and 91 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange service and CAPs are small entities that may be affected by the rules.

Local Resellers. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS code 517310). According to the FCC's *Telephone Trends Report* data, 127 companies reported that they were engaged in the provision of local resale services. (See *Telephone Trends Report*, Table 5.3). Of these 127 companies, an estimated 121 have 1,500 or fewer employees, and six have more than 1,500 employees. Consequently, the Commission

estimates that the majority of local resellers may be affected by the rules.

Toll Resellers. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS code 517310). According to the FCC's *Telephone Trends Report* data, 645 companies reported that they were engaged in the provision of toll resale services. (See *Telephone Trends Report*, Table 5.3). Of these 645 companies, an estimated 619 have 1,500 or fewer employees, and 26 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

Interexchange Carriers. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS code 517110). According to the FCC's *Telephone Trends Report* data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services. (See *Telephone Trends Report*, Table 5.3). Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and 27 have more than 1,500 employees. Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

Operator Service Providers. Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS code 517110). According to the FCC's *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services. (See *Telephone Trends Report*, Table 5.3). Of these 21 companies, an estimated 20 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of operator service providers may be affected by the rules.

Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small entities 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 the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS code 517110). According to the FCC's *Telephone Trends Report* data, 65 carriers reported that they were engaged in the provision of "Other Toll Services." (See *Telephone Trends Report*, Table 5.3). Of these 65 carriers, an estimated 62 have 1,500 or fewer employees, and three have more than 1,500 employees. Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" (See 13 CFR 121.201, NAICS code 517211) and "Cellular and Other Wireless Telecommunications." (See 13 CFR 121.201, NAICS code 517212). Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. (See U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. (See U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more.") Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. (See U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5,

Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). 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. (See U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more.") Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

As noted, the Commission tentatively concludes that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges; and that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale. Furthermore, the Commission seeks comment on whether it is unreasonable to combine federal regulatory charges into a single line item. However, the Commission also tentatively concludes that it should reverse its prior holding permitting states to enact and enforce telecommunications carrier-specific truth-in-billing rules. This tentative conclusion is designed to address the potential for inconsistent state regulation of CMRS and other interstate carrier billing practices, and thereby simplify the requirements for such carriers' compliance with potentially disparate billing regulations. Aside from simplifying procedural compliance requirements for small entities, we expect that this measure also will alleviate some compliance costs for small entities.

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

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 such 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. (See 5 U.S.C. 603(c)(1)–(c)(4)).

As described above, the Commission seeks comment on the distinction between government “mandated” and other charges, and tentatively concludes that where carriers choose to list charges in separate line items on their customers’ bills, government mandated charges must be placed in a section of the bill separate from all other charges. The Commission also seeks comment on whether it is unreasonable to combine federal regulatory charges into a single line item, though any commenter who still believes that carriers should be able to combine two or more of these charges into a single charge is welcome to refresh the record on how carriers should identify such line items. Furthermore, the Commission tentatively concludes that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale, and that such disclosure must occur before the customer signs any contract for the carrier’s services. For each of these issues and tentative conclusions, the Commission seeks comment on the effects its proposals would have on small entities, and whether any rules it adopts should apply differently to small entities.

For instance, the *Second Further Notice* seeks comment on whether the Commission should require standardized labeling of categories of charges on consumers’ bills, and what the monetary costs of such a requirement would be. The Commission particularly seeks comment on the nature of the economic impact of such a requirement on small entities, and whether the proposed requirement should be applied to them in any manner different from its application to entities that do not qualify as small entities. In addition, the Commission tentatively concludes that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale, and that such disclosure must occur before the customer signs any contract for the carrier’s services. The Commission specifically seeks comment on the effect of these tentative

conclusions on small entities, and on whether it would be appropriate to apply whatever provisions the Commission adopts to small entities in the same manner that it applies them to entities that do not qualify as small.

The Commission does not have any evidence before it at this time regarding whether proposals outlined in this *Second Further Notice* would, if adopted, have a significant economic impact on a substantial number of small entities. However, the Commission recognizes that mandating changes to the format of consumers’ bills, and specific point of sale disclosures, likely would result in additional burdens on small CMRS providers and other interstate carriers. The Commission therefore seeks comment on the potential impact of these proposals on small entities, and whether there are any less burdensome alternatives that it should consider.

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

In seeking comment on its tentative conclusion that government mandated charges should be placed in a section of the bill separate from all other charges, where carriers choose to list charges in separate line items on their customers’ bills, the Commission notes that: (1) § 64.2400(a) of the Commission’s rules provides that the truth-in-billing rules are intended “to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service”; and (2) § 64.2401(b) requires that descriptions of billed charges be brief, clear, non-misleading, and in plain language. The Commission seeks comment on its stated belief that separating government mandated charges from all other charges satisfies the policy goals embedded in these rules. Though any rules that the Commission may adopt to implement this tentative conclusion may overlap somewhat with 47 CFR 64.2400(a) and 64.2401(b), the Commission believes that these new rules would complement the existing rules, rather than duplicating them or conflicting with them.

In tentatively concluding that bases other than the rate regulation proscription of § 332(c)(3)(A) exist for the Commission to preempt state regulation of carriers’ billing practices, the Commission tentatively concludes further that it should reverse its prior pronouncement that states may enact and enforce more specific truth-in-

billing rules than the Commission’s. In large part, this pronouncement has been embodied by the substance of 47 CFR 64.2400(c). The Commission seeks comment on, if it does adopt this further tentative conclusion, whether it should limit the scope of what constitutes “consistent truth-in-billing requirements by the states” under 47 CFR 64.2400(c), eliminate § 64.2400(c) from its rules altogether, or adopt an enforcement regime where states are permitted to enforce rules developed by the Commission. Thus, the Commission’s tentative conclusions may conflict with 47 CFR 64.2400(c), or may overlap with that rule in a manner in which the existing rule may be harmonized with the Commission’s tentative conclusions.

Ordering Clauses

Pursuant to the authority contained in sections 1–4, 201, 202, 206–208, 258, 303(r), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 206–208, 258, 303(r), and 332; section 601(c) of the Telecommunications Act of 1996; and §§ 1.421, 64.2400 and 64.2401 of the Commission’s Rules, 47 CFR 1.421, 64.2400, and 64.2401, the *second further notice of proposed rulemaking is adopted*.

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

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 05–10118 Filed 5–24–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1305; MB Docket No. 04–80, RM–10875]

Radio Broadcasting Services; St. Florian, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Audio Division denies a Petition for Rule Making filed by American Family Association proposing the reservation of vacant Channel 274A at St. Florian, Alabama for noncommercial educational use because