

- b. In paragraph (b)(2), after “11.304,” add “11.603.”

§ 11.104 [Removed and Reserved]

- 9. Remove and reserve § 11.104.
 ■ 10. Revise § 11.601 to read as follows:

§ 11.601 Applicability.

This subpart provides for endorsement as radio officers for employment on vessels, and for the issue of STCW endorsements for those qualified to serve as radio operators on vessels subject to the provisions on the Global Maritime Distress and Safety System (GMDSS) of Chapter IV of SOLAS. SOLAS is available from the *International Maritime Organization (IMO)*, 4 Albert Embankment, London SE1 7SR, England, telephone: +44 (0)20 7735 7611, <http://www.imo.org>.

Dated: July 30, 2009.

Stefan G. Vencus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 07-267; FCC 09-56]

Forbearance Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order, the Commission adopts procedural rules to govern petitions for forbearance filed pursuant to section 10 of the Communications Act of 1934, as amended. The Commission has found that procedural rules are needed to specify parties' rights and obligations with regard to such petitions. The Commission's actions are designed to ensure that its procedures for handling forbearance petitions are front-loaded, actively managed, transparent, and fair.

DATES: Effective September 8, 2009 except § 1.54 which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for those requirements.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Interested parties may contact Jonathan

Reel, Wireline Competition Bureau, (202) 418-1580.

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. 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 Report and Order (Order) in WC Docket No. 07-267, FCC 09-56, adopted June 26, 2009, and released June 29, 2009. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Synopsis of Report and Order

1. In November 2007, the Commission released a Notice of Proposed Rulemaking (the *Forbearance Procedures NPRM*) (73 FR 6888-01, February 6, 2008) initiating a rulemaking proceeding to establish procedural rules regarding the Commission's consideration of petitions for forbearance filed pursuant to section 10 of the Communications Act of 1934, as amended, (the Act). In this NPRM, the Commission sought comment on measures that had been proposed in a petition filed by Covad Communications Group, NuVox Communications, XO Communications, LLC, Cavalier Telephone Corp., and McLeodUSA Telecommunications Services, Inc. The Commission sought comment on, among other questions, whether all petitions for forbearance should be complete as filed; whether a petitioner for forbearance should have to demonstrate separately how it has satisfied each component of the forbearance standard; and whether the Commission must issue a written order on all forbearance proceedings. The Commission also asked whether the forbearance process was being used as Congress intended, how individual forbearance proceedings relate to industry-wide proceedings, and what burdens, including administrative and financial costs, forbearance proceedings place on stakeholders in the industry.

2. In this Order, the Commission adopts procedural rules regarding forbearance petitions that reflect the Commission's experience in addressing more than 120 forbearance petitions that have been filed under section 10 as well as the record in response to the *Forbearance Procedures NPRM*. In particular, the Commission adopts rules requiring that forbearance petitions be “complete as filed.” This is consistent with the principle that whenever a petitioner files a petition for forbearance, the petitioner bears the burden of proof with respect to establishing that the statutory criteria for granting forbearance are met. The Commission also adopts procedures to ensure that forbearance petitions are addressed in a timely, equitable, and predictable manner. Further, the Commission provides that a forbearance petition may no longer be withdrawn or significantly narrowed by the petitioner after the tenth business day after the due date for reply comments without Commission authorization. These actions and the other actions in the Order seek to implement procedures for handling forbearance petitions in a manner that is front-loaded, actively managed, transparent, and fair.

3. *Petitions Must be Complete as Filed.* In the *Forbearance Procedures NPRM*, the Commission sought comment on whether forbearance petitions should be required to be “complete as filed.” Here, the Commission concludes that section 10 petitions for forbearance must be complete as described below. Henceforth, the Commission requires forbearance petitions to state explicitly the scope of the relief requested; to address each prong of the statute as it applies to the rules or provisions from which the petitioner seeks relief; to identify any other proceedings pending before the Commission where the petitioner speaks to the relevant issues (or declare not to have spoken to the issue, if that is the case); and to comply with simple format requirements intended to facilitate our and the public's review of the petition.

4. The requirement does not prevent a petitioner from seeking additional data from third parties. At the time of filing, forbearance petitioners must identify the nature of the third-party information they need, the parties they believe possess it, and how the information relates to the petition. The requirement does not limit a petitioner's ability to respond to arguments and data in oppositions and comments with counter-arguments and responsive data. A petitioner may submit substantively new material, including new

information, data, studies, or arguments, at the request of the Commission, as well as in response to oppositions. The Commission may be expected to require updated data from a petitioner prior to reaching some determinations, and the filing requirement in no way prevents the Commission from seeking information or clarification from any source, or basing its forbearance decision on all timely-filed evidence.

5. *Scope.* A petitioner for forbearance must identify clearly in the petition the scope of the requested relief. In particular, the petition must state the following with specificity: (1) Each statutory provision, rule, or requirement from which forbearance is sought; (2) each carrier, or group of carriers, for which forbearance is sought; (3) each service for which forbearance is sought; (4) the geographic location, zone, or area in which forbearance is sought; and (5) any other factor, condition, or limitation relevant to determining the scope of the requested relief. The Commission's ability to make the determinations within the statutory time frame required is significantly compromised when a petition does not clearly state the relief sought.

6. *The Prima Facie Case.* A petition for forbearance must include in the petition the facts, information, data, and arguments on which the petitioner intends to rely to make the prima facie case for forbearance. Specifically, the *prima facie* case must show in detail how each of the statutory criteria are met with regard to each statutory provision or rule from which forbearance is sought. A petition for forbearance must take into account relevant Commission precedent. If the petitioner intends to rely on data or information in the possession of third parties, the petition must identify the data or information, and the parties that possess it, and explain the relationship of the information to the *prima facie* case. When the petition is filed at the Commission, the petitioner must provide a copy of it to each party identified as possessing relevant data or information, and the relevant Bureau will respond to requests for third-party discovery on a case-by-case basis. Other than third-party information, a petition may not rely on data or information that is not made available, without charge, to the Commission staff and interested parties that agree to comply with any protective orders the Commission issues in the course of the proceeding.

7. *Relevant Proceedings.* A petition for forbearance must identify any proceeding pending before the Commission in which the petitioner has requested, or otherwise taken a position

regarding, relief that is identical to, or comparable to, the relief sought in the forbearance petition. Alternatively, the petition must state that the petitioner has not, in a pending proceeding, requested or otherwise taken a position on the relief sought, if that is the case.

8. *Format and Filing Requirements.* Petitions for forbearance must comply with the Commission's general filing requirements in 47 CFR 1.49. In addition, all petitions for forbearance must be e-mailed to forbearance@fcc.gov at the time of filing. All filings including all data related to a forbearance petition must be provided in a searchable format. The steps a filer must take to ensure its submission is searchable will vary by context. At a minimum, a party that submits large spreadsheets of data should submit electronic copies of those data formatted so as to allow Commission staff and other interested parties a meaningful opportunity to analyze those data. A forbearance petition must include (1) a plain, concise, written summary statement of the relief sought; (2) a full statement of the petitioner's prima facie case for relief; and (3) appendices that list (a) the scope of relief sought, (b) all relevant data, including market analysis, and (c) any supporting statements or affidavits.

9. *Burden of Proof.* The Commission concludes that the petitioner bears the burden of proof—that is, of providing convincing analysis and evidence to support its petition for forbearance. This has historically been the case in American jurisprudence. The burden of proof is on the proponent in both formal rulemaking and formal adjudication, but the Commission considers arguments whether a forbearance proceeding more closely resembles rulemaking or adjudication to be largely beside the point. Whatever passing similarity to other procedures petitions for forbearance may have, the essential nature of a petition for forbearance is that it is a petition for relief from regulation. The petitioner asks the Commission to forbear from enforcing against it one or more rules or statutory provisions, which the Commission will do if it determines that the petition meets the statutory criteria. The Commission requires petitioners to produce sufficient evidence and analysis to warrant the grant of a forbearance petition, and in this order states explicitly that the burden of proof is on forbearance petitioners at the outset and throughout the proceeding.

10. The Commission further clarifies that the “burden of proof” for the purpose of forbearance proceedings encompasses both the burden of

production and the burden of persuasion. The burden of production in this context requires that the petitioner state a complete prima facie case in the petition, the precise requirements of which are discussed in the “complete as filed” section. The burden of persuasion requires that, in addition to stating a prima facie case, the petitioner's evidence and analysis must withstand the evidence and analysis propounded by those opposing the petition for forbearance. If the petitioner does not support the case for forbearance with sufficient evidence and persuasive arguments, the Commission cannot make an informed and reasoned determination that the statutory criteria are met. In determining whether a petitioner has met its burden of proof, the totality of the record will be taken into consideration. For example, the Commission will consider evidence filed in the record by third parties that is favorable to the petitioner's position as part of the petitioner's showing.

11. *Transparency.* After the rules adopted in this Order take effect, the Commission will post on its web site a timeline intended to identify the stages of review of forbearance petitions. The web page will also contain docket numbers, contact information, and a link to the Commission's Electronic Comment Filing System. Posting this information will promote a better understanding of how the Commission gives full and timely attention to the issues presented in a forbearance petition, and will establish a framework that describes how review of a forbearance petition should normally progress.

12. A general timeline necessarily oversimplifies the process, and the circumstances of individual cases will differ. Internal deadlines create no enforceable rights for private parties, and such targets should be understood rather as goals for internal Commission action. The timeline should therefore be viewed as a flexible tool, and the order and timing may vary. Generally, the later stages and times are intended to indicate procedural goals for the most complex petitions. The statutory obligation to determine each of section 10's three prongs takes precedence over the informal timeline, and the Commission's failure to adhere to a benchmark is not indicative of how it will resolve the issues raised in a proceeding.

13. *Filing and Initial Review.* Filing a petition starts the clock on the statutory time limit. The Bureau will review the petition upon receipt. A petition that on its face is incomplete or defective will be summarily denied. As a practical

matter, the initial review upon filing should determine whether the petition appears to be complete, coherent, and sufficiently specific to serve as a basis for comment. The legal standard for summary denial is whether the petition, viewed in the light most favorable to the petitioner, fails to meet the requirements for forbearance specified in the statute.

14. Summary denial on receipt gives petitioners an early opportunity to cure and refile, and respects interested parties' resources. Failure by the Bureau to summarily deny a petition upon receipt does not establish or even imply that the petition is "complete as filed." It merely establishes that the petitioner has observed the filing procedures adopted today and that no fatal insufficiency is evident upon cursory review. Threshold questions about a petition's completeness may be sufficiently complex to require comment and consideration.

15. *Public Notice.* If a petition appears to be complete and coherent on its face, the Bureau will give public notice and post the petition on the forbearance page of the Commission's Web site. The notice will announce the pleading cycle, which will typically allow 30 days for comments and 15 days for replies, with longer cycles for the more complex petitions. The Bureau may issue a protective order, as needed. Motions for summary denial may be filed not later than the due date for comments, to which the petitioner may file an opposition not later than the due date for replies. In the interest of completing the record in one cycle, and consistent with our formal complaint rules, replies to oppositions to motions for summary denial will not be permitted. The Commission retains the flexibility to ensure that the time for comment on any individual forbearance petition is both adequate and not needlessly long.

16. *Motions for Summary Denial.* Commenters may use motions for summary denial to focus their attention on completeness and clarity, and should avoid conflating these threshold issues with their substantive arguments. A contention, for example, that a petition does not address an issue at a sufficiently granular level to permit meaningful analysis of whether or not the statutory criteria are met might form the basis of a motion for summary denial. Because the Commission expects the arguments and scope of the relief sought to vary widely from petition to petition, the adequate granularity of data may likewise vary, and for that reason the Commission will judge on a case-by-case basis whether or not a petition for forbearance requires

supporting data at, for example, the wire center level. Failure by the Bureau to deny a petition summarily does not establish that the petition is "complete as filed." Although the Bureau may grant a motion for summary denial, it may instead use the record generated by the motion to better understand threshold issues early in the process. The Commission may address a motion for denial at any time, up to and including the statutory time limit for Commission action.

17. *Intermediate Period.* An intermediate period consisting roughly of months 3 through 10 follows the closing of the comment cycle. During this period, the Bureau will consider whether to grant or deny routine or less complex forbearance petitions that clearly meet, or clearly fail to meet, the statutory forbearance criteria. The Commission may be able to resolve such petitions within six months of their filing. For more complex petitions, the Bureau may actively develop the record where appropriate during this intermediate period, and will review comments, analyze data, and discuss the merits of the petition with the Commissioners and their staff.

18. *Circulation and Quiet Period.* The final period will generally consist roughly of months 11 and 12 in normal cases, or months 14 and 15 if the Commission requires an extension of time. In this Order, the Commission adopts an internal deadline of seven days prior to the statutory deadline for voting any forbearance order, whether on circulation or at an agenda meeting. An early vote gives a majority that votes against the circulated draft an opportunity to draft a replacement order prior to the statutory deadline. An early vote also will generally ensure that the Commission will be able to make the necessary determinations and release an order before the statutory deadline.

19. Each step described below is calculated against the statutory deadline, and not against the deadline for the vote, which the Commission determines, as set forth above, should occur seven days prior to the statutory deadline. The Bureau will circulate a draft order addressing a complex forbearance petition no later than 28 days prior to the statutory deadline, which is to say, 21 days prior to the voting deadline, unless all Commissioners agree to a shorter period. The Commission establishes a two-week quiet period before the statutory deadline (one week before the voting deadline) for forbearance petitions, which is analogous to the one-week quiet period before an agenda meeting. A public notice, posted on the

Web site, will announce the beginning of the quiet period, which may occur earlier in the proceeding in cases where the Commission does not require the full statutory period to render a decision.

20. *Withdrawal of Forbearance Petitions.* The Commission concludes that it, rather than solely the petitioner, should decide whether or not a forbearance proceeding concludes with any action other than the issuance of a decision by the Commission. Henceforth, for the reasons set forth below, a petitioner may not withdraw a forbearance petition, nor may a petitioner narrow a petition so significantly as to amount to a withdrawal of a large portion of the forbearance relief originally requested by the petitioner after the date that its reply comments are due plus 10 business days, unless the Commission authorizes the withdrawal. A petitioner is free to withdraw or narrow a petition prior to such date. The Commission has a significant stake in the matter if it is to maintain control over its own agenda and apportion its resources in a way that serves the public interest. For similar reasons, Federal Rule of Civil Procedure 41 requires a complainant to get court permission before withdrawing a complaint if the withdrawal comes after the filing of an answer or motion for summary judgment.

21. Permitting parties to withdraw petitions in the late stages of a proceeding that are otherwise headed for denial could also distort the Commission's jurisprudence. Over time, Commission precedent could tilt toward orders that contain analysis and reasoning in support of forbearance petitioners, and away from orders that make a case against them. If petitioners are allowed to select the orders that the Commission adopts, they could inadvertently or deliberately push precedent in a direction favorable to themselves, and thus exert undue influence on regulatory policy.

22. *Application to Pending Petitions.* The new complete-as-filed rules take effect after this Order has been published in the **Federal Register** and subject to approval by the Office of Management and Budget. Other new requirements will apply to pending petitions, including rules that require a petitioner to seek permission from the relevant Bureau before filing new arguments or data (except in response to new arguments or data filed by commenters, to which the petitioner may respond by right); rules that limit when forbearance petitions may be withdrawn or narrowed as of right; rules that limit *ex parte* contacts in the final

weeks before a decision is due; and any other rule that “would [not] impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed.” In contrast to the new filing requirements, these rules do not apply to a petitioner’s past actions and thus are not directly retroactive. Thus, they will take effect 30 days after publication of this Order in the **Federal Register**.

Final Regulatory Flexibility Analysis, WC Docket No. 07–267 (Forbearance Petitions Procedural Rules)

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) to this proceeding. See 73 FR 6888–01, February 6, 2008. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for and Objectives of the Report and Order

24. This Report and Order (Order) implements procedural rules governing petitions for forbearance filed pursuant to sections 10 of the Communications Act of 1934, as amended, (the Act). Pursuant to section 10, the Commission shall forbear from applying any statutory provision or regulation if it determines that: (1) Enforcement of the regulation is not necessary to ensure that the telecommunications carrier’s charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. In determining whether forbearance is consistent with the public interest, the Commission also must consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.” The procedural rules adopted in this Order require that forbearance petitions must be “complete as filed.” The Order also clarifies that whenever a petitioner files a petition for forbearance, the petitioner bears the burden of proof with respect to establishing that the statutory criteria for granting forbearance are met. The rules adopted in this Order are needed to ensure that forbearance petitions are addressed in a manner that is actively managed, transparent, and fair.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

25. No commenter responded directly to the IRFA. One commenter, SBA, specifically addresses the needs of small carriers. The Commission agrees with SBA that a complete-as-filed requirement will better enable all interested parties to present their views before the Commission; that establishment of a framework brings clarity to the forbearance process; and that, when the statutory language fails to indicate whether the petitioner must carry the burden of proof, the petitioner has the burden of proof because it is the petitioner that is requesting regulatory change.

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

26. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 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.

27. The rules and guidance adopted by this Order will concern procedures relating to petitions for forbearance filed pursuant to section 10 of the Act. The Commission has determined that the group of small entities directly affected by the rules adopted herein consists of wireline and wireless telecommunications carriers. Therefore, in the Order, the Commission considers the impact of the rules on carriers. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

28. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses according to SBA data.

29. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

30. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of

less than fifty thousand.” Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

1. Wireline Carriers and Service Providers

31. The Commission has included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

32. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 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 our action.

33. *Competitive LECs, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or

competitive LEC services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the 44, an estimated 43 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, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

34. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

2. Wireless Telecommunications Service Providers

35. Below, for those services subject to auctions, 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.

36. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." 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 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under

this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

37. *Cellular Licensees*. The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The Commission has estimated that 260 of these are small under the SBA small business size standard.

38. *Paging*. The SBA has developed a small business size standard for the broad economic census category of "Paging." Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. In addition, according to Commission data, 365 carriers have reported that they are engaged in the provision of "Paging and Messaging Service." Of this total, the Commission estimates that 360 have 1,500 or fewer employees, and five have more than 1,500 employees. Thus, in this category the majority of firms can be considered small.

39. The Commission also notes that, in the *Paging Second Report and Order*, it adopted a size standard for "small businesses" for purposes of determining

their eligibility for special provisions such as bidding credits and installment payments. In this context, 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. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. The Commission also notes that, currently, there are approximately 74,000 Common Carrier Paging licenses.

40. *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 or less for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million or less 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.

41. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a 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. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 221 of these are small

under the SBA small business size standard.

42. *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. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

43. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission 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. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

44. *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 category provides that a small business is a wireless company employing no more than 1,500 persons. 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. 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 second category and size standard, the majority of firms can, again, be considered small. Assuming 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. In addition, limited preliminary census data for 2002 indicate that the total number of cellular and other wireless telecommunications carriers increased approximately 321 percent from 1997 to 2002.

45. *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.

46. *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 800 MHz and 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, respectively. 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.

47. *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.

48. *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 rules and policies adopted herein.

49. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”), and the Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”), to transmit video programming and provide broadband services to residential subscribers.

These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS. Other standards also apply, as described.

50. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission’s auction rules.

51. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees,

and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

52. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a “very small business,” which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years. These definitions of “small business” and “very small business” in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

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 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licensees 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 (MSA) 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 holds interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

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, total, 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 our 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.

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

57. The rules adopted in this Order require that petitions for forbearance must be complete as filed as set forth in new section 1.54 “Petitions for forbearance must be complete as filed.” Section 1.54 requires that petitions for forbearance must identify the requested relief, including each provision, rule, or requirement from which forbearance is sought; each carrier, or group of carriers, for which forbearance is sought; each service for which forbearance is sought; each geographic location, zone, or area for which forbearance is sought; and any other factor, condition, or limitation relevant to determining the scope of the requested relief. Section 1.54 also requires that petitions for forbearance must contain facts and arguments which, if true and persuasive, are sufficient to meet each of the statutory criteria for forbearance and must specify how each of the statutory criteria is met with regard to each provision or rule from which forbearance is sought. If the petitioner intends to rely on data or information in the possession of third parties, the petition must identify: the nature of the data or information; the parties believed to have or control the data or information; and the relationship of the data or information to facts and arguments presented in the petition. A petition for forbearance must identify any other petition, rulemaking, or waiver proceeding pending before the Commission in which the petitioner has requested, or otherwise taken a position regarding, relief that is identical to, or comparable to, the relief sought in the forbearance petition. Alternatively, the petition must declare that the petitioner has not, in a pending proceeding, requested or otherwise taken a position on the relief sought.

58. In addition, petitions for forbearance must comply with the

ministerial filing requirements in section 1.49. Petitions for forbearance must be e-mailed to a temporary repository at forbearance@fcc.gov at the time for filing. All filings related to a forbearance petition, including all data, must be provided in a searchable format. Petitions for forbearance must include: (1) A plain, concise, written summary statement of the relief sought; (2) a full statement of the petitioner’s prima facie case for relief; (3) appendices that list: (A) the scope of relief sought as required in section 1.53(b); (B) all supporting data upon which the petition intends to rely, including a market analysis; and (C) any supporting statements or affidavits. To be searchable, a spreadsheet containing a significant amount of data must be capable of being manipulated to allow meaningful analysis.

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

59. 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.

60. Although the Order imposes compliance or reporting requirements, nothing in the record suggests that small carriers are disadvantaged by the new procedural requirements. In fact, small entities are disadvantaged by the lack of procedural rules governing consideration of forbearance petitions, because they have had to expend significant resources to respond to the scattershot arguments that have been made by much larger entities that have sought and often received forbearance in recent years. The SBA filed comments in support of the new information requirement that petitions for forbearance must be complete as filed.

F. Report to Congress

61. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. A copy of the Order and FRFA (or

summaries thereof) will also be published in the **Federal Register**.

Final Paperwork Reduction Act of 1995 Analysis

62. The Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The OMB, the general public, and other Federal agencies are invited to comment on the new and modified information collection requirements contained in this proceeding. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2005, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4) (SBPRA), the Commission has considered how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” The Commission found that the new and modified requirements must apply fully to small entities (as well as to others) to protect consumers and further other goals, as described in the Report and Order.

Congressional Review Act

63. The Commission will include a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

64. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 4(j), 5(c), 10, 201, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155(c), 160, 201, and 303(r), that the Report and Order in WC Docket No. 07–267 *is adopted*, and that part 1 of the Commission’s rules, 47 CFR part 1, *is amended* as set forth in Appendix B in the Report and Order.

65. *It is further ordered* that the rules and the requirements of this Report and Order *shall become effective* September 8, 2009 except § 1.54 which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for those requirements.

66. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(j), 160, 201, 225, and 303.

■ 2. Section 1.49 is amended by:

■ A. Removing the word “and” from paragraph (f)(1)(ii);

■ B. Removing the period at the end of paragraph (f)(1)(iii) and adding “; and” in its place; and

■ C. Adding paragraph (f)(1)(iv) to read as follows:

§ 1.49 Specifications as to pleadings and documents.

* * * * *

(f)(1) * * *

(iv) Petition for forbearance proceedings.

* * * * *

■ 3. Add undesignated center heading below § 1.52 to read as follows:

Forbearance Proceedings

■ 4. Add new §§ 1.54 through 1.59 to read as follows:

§ 1.54 Petitions for forbearance must be complete as filed.

(a) *Description of relief sought.*

Petitions for forbearance must identify the requested relief, including:

(1) Each statutory provision, rule, or requirement from which forbearance is sought.

(2) Each carrier, or group of carriers, for which forbearance is sought.

(3) Each service for which forbearance is sought.

(4) Each geographic location, zone, or area for which forbearance is sought.

(5) Any other factor, condition, or limitation relevant to determining the scope of the requested relief.

(b) *Prima facie case.* Petitions for forbearance must contain facts and arguments which, if true and persuasive, are sufficient to meet each of the statutory criteria for forbearance.

(1) A petition for forbearance must specify how each of the statutory

criteria is met with regard to each statutory provision or rule, or requirement from which forbearance is sought.

(2) If the petitioner intends to rely on data or information in the possession of third parties, the petition must identify:

(i) The nature of the data or information.

(ii) The parties believed to have or control the data or information.

(iii) The relationship of the data or information to facts and arguments presented in the petition.

(3) The petitioner shall, at the time of filing, provide a copy of the petition to each third party identified as possessing data or information on which the petitioner intends to rely.

(c) *Identification of related matters.* A petition for forbearance must identify any proceeding pending before the Commission in which the petitioner has requested, or otherwise taken a position regarding, relief that is identical to, or comparable to, the relief sought in the forbearance petition. Alternatively, the petition must declare that the petitioner has not, in a pending proceeding, requested or otherwise taken a position on the relief sought.

(d) *Filing requirements.* Petitions for forbearance shall comply with the filing requirements in § 1.49.

(1) Petitions for forbearance shall be e-mailed to *forbearance@fcc.gov* at the time for filing.

(2) All filings related to a forbearance petition, including all data, shall be provided in a searchable format. To be searchable, a spreadsheet containing a significant amount of data must be capable of being manipulated to allow meaningful analysis.

(e) *Contents.* Petitions for forbearance shall include:

(1) A plain, concise, written summary statement of the relief sought.

(2) A full statement of the petitioner’s *prima facie* case for relief.

(3) Appendices that list:

(i) The scope of relief sought as required in § 1.54(a);

(ii) All supporting data upon which the petition intends to rely, including a market analysis; and

(iii) Any supporting statements or affidavits.

(f) *Supplemental information.* The Commission will consider further facts and arguments entered into the record by a petitioner only:

(1) In response to facts and arguments introduced by commenters or opponents.

(2) By permission of the Commission.

§ 1.55 Public notice of petitions for forbearance.

(a) Filing a petition for forbearance initiates the statutory time limit for consideration of the petition.

(b) The Commission will issue a public notice when it receives a properly filed petition for forbearance. The notice will include:

(1) A statement of the nature of the petition for forbearance.

(2) The scope of the forbearance sought and a description of the subjects and issues involved.

(3) The docket number assigned to the proceeding.

(4) A statement of the time for filing oppositions or comments and replies thereto.

§ 1.56 Motions for summary denial of petitions for forbearance.

(a) Opponents of a petition for forbearance may submit a motion for summary denial if it can be shown that the petition for forbearance, viewed in the light most favorable to the petitioner, cannot meet the statutory criteria for forbearance.

(b) A motion for summary denial may not be filed later than the due date for comments and oppositions announced in the public notice.

(c) Oppositions to motions for summary denial may not be filed later than the due date for reply comments announced in the public notice.

(d) No reply may be filed to an opposition to a motion for summary denial.

§ 1.57 Circulation and voting of petitions for forbearance.

(a) If a petition for forbearance includes novel questions of fact, law or policy which cannot be resolved under outstanding precedents and decisions, the Chairman will circulate a draft order no later than 28 days prior to the statutory deadline, unless all Commissioners agree to a shorter period.

(b) The Commission will vote on any circulated order resolving a forbearance petition not later than seven days before the last day that action must be taken to prevent the petition from being deemed granted by operation of law.

§ 1.58 Forbearance petition quiet period prohibition.

The prohibition in § 1.1203(a) on contacts with decisionmakers concerning matters listed in the Sunshine Agenda shall also apply to a petition for forbearance for a period of 14 days prior to the statutory deadline under 47 U.S.C. 160(c) or as announced by the Commission.

§ 1.59 Withdrawal or narrowing of petitions for forbearance.

(a) A petitioner may withdraw or narrow a petition for forbearance without approval of the Commission by filing a notice of full or partial withdrawal at any time prior to the end of the tenth business day after the due date for reply comments announced in the public notice.

(b) Except as provided in paragraph (a) of this section, a petition for forbearance may be withdrawn, or narrowed so significantly as to amount to a withdrawal of a large portion of the forbearance relief originally requested by the petitioner, only with approval of the Commission.

[FR Doc. E9-18863 Filed 8-5-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 09-1533; MB Docket No. 09-70; RM-11534]

Television Broadcasting Services; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Amarillo Junior College District, the licensee of noncommercial educational station KACV-DT, DTV channel *8, Amarillo, Texas requesting the substitution of DTV channel *9 for DTV channel *8 at Amarillo.

DATES: This rule is effective August 6, 2009.

FOR FURTHER INFORMATION CONTACT:

Adrienne Y. Denysyk, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09-70, adopted July 13, 2009, and released July 14, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554,

telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Texas, is amended by adding DTV channel *9 and removing DTV channel *8 at Amarillo.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-18262 Filed 8-5-09; 8:45 am]

BILLING CODE 6712-01-P