

comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Regional Administrator or State Director must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Regional Administrator or State Director providing the following information: The types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of paragraph (a)(7) of this section, mineral processing spent materials must be the result of mineral processing and may not include any

listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

* * * * *

4. Section 261.24 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 261.24 Toxicity characteristic.

(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at the concentration equal to or greater than the respective value given in that table.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96-45, 98-77, 90-571, 92-237, 99-200, and 95-116; FCC 02-43]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts certain modifications to the existing federal universal service contribution system. Based on examination of the record, the Commission concludes that these modifications are warranted because they will streamline and improve the current system without undue disruption while the Commission considers other, more substantial reforms.

DATES: Effective April 12, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, and 95-

116, FCC 02-43 released on February 26, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In the Report and Order, we adopt certain modifications to the existing federal universal service contribution system. Based on examination of the record, we conclude that these modifications are warranted because they will streamline and improve the current system.

II. Report and Order

2. In the Notice of Proposed Rulemaking initiating this proceeding, see 66 FR 28718 (May 24, 2001), we recognized the need to reassess periodically the current contribution methodology to ensure that it remains consistent with the goals of the Act as the telecommunications marketplace evolves. Although we are seeking more focused comment on specific proposals to reform the Commission's universal service contribution methodology, we conclude that certain modifications to the current revenue-based contribution assessment methodology should be adopted now to ensure that the goals of the Act are maintained in the short term. Specifically, the measures we adopt in the Order will ensure that universal service funding remains specific and predictable while we consider whether to implement more substantial changes to the contribution methodology. In addition, these modifications will ensure that the recovery of universal service contributions is more understandable for consumers. These measures also will further reduce the regulatory costs of complying with universal service obligations and will ensure that the assessment of contributions remains equitable and nondiscriminatory.

3. First, we revise the Commission's rules to exclude universal service contributions from a contributor's assessable gross-billed interstate telecommunications revenues. This modification addresses "circularity" in the current methodology that may cause contributors to mark-up line items. Second, we amend the rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries. Third, we increase from eight to 12 percent the amount of domestic interstate revenues a contributor may have and still qualify for the limited international revenues

exception to our universal service contribution requirements.

A. Eliminating Circularity

4. We adopt our proposal to exclude universal service contributions from a contributor's assessable gross-billed interstate telecommunications revenues, so-called "circularity." This measure will eliminate one cause for contributors to recover amounts in excess of the contribution factor.

5. We clarify how the exclusion of contributor contributions from the contribution base will operate in practice. Contributors will continue to file the Form 499-Q with their gross-billed interstate telecommunications revenues from the prior quarter. A contributor's reported gross-billed interstate telecommunications revenues from the prior quarter serve as the basis for its contributions in the next quarter. The Universal Service Administrative Company (USAC) will subtract from a contributor's contribution base in the upcoming quarter those amounts contributed to universal service in the prior quarter. Contributions will be credited in the quarter in which they are received by USAC. We direct USAC to begin excluding carrier contributions from the contribution base in the third quarter of 2002.

B. Consolidated Form 499 Filing for Certain Contributors

6. We modify our reporting requirements to enable contributors meeting certain criteria to file the Form 499 Worksheet on a consolidated basis. The criteria we adopt for permitting consolidated filings are designed to ensure that a contributor actually functions as a single entity, and to obtain essential revenue and contact information from such a contributor. The ability to file a consolidated Worksheet may substantially decrease the administrative burdens on some contributors. For example, it may ameliorate the need of some contributors to artificially divide their whole company revenues into separate revenue amounts for their subsidiaries solely for Worksheet reporting purposes. We anticipate that many wireless contributors will qualify and choose to file the Worksheet on a consolidated basis. Furthermore, this revision may dramatically decrease the number of Worksheets filed with USAC, thereby reducing the administrative burden on the Commission's data collection agent and fund administrators. Most importantly, permitting contributors to have the option of filing on a consolidated basis will have no negative

impact on the integrity of the information contained in the Worksheet.

7. Under the modified reporting requirements we adopt here, consolidated filing will be permitted only if the filing entity certifies that all of the following conditions are met:

- (1) A single entity oversees the management of the affiliated systems;
- (2) A single entity sends bills to customers and these bills identify a single entity (or trade name) as the service provider, rather than identifying the individual legal entities;
- (3) All revenues are posted to a single general ledger;
- (4) To the extent that separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;
- (5) Customers have a single point of contact;
- (6) The consolidated filer acknowledges that process served on the consolidated filer would represent process served on any or all of the affiliated legal entities;
- (7) The consolidated filer agrees to document and resolve all slamming complaints that might be served on either the filing entity or any of the affiliated legal entities;
- (8) The consolidated filer obtains a separate FRN from those assigned to its affiliated legal entities;
- (9) The consolidated filer acknowledges that its obligations with regard to universal service, Telecommunications Relay Services, Local Number Portability, North American Numbering Plan Administrator, and regulatory fees will be based on the data provided in consolidated Worksheet filings, that it bears the responsibility to satisfy those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
- (10) The consolidated filer acknowledges that it: (A) Was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (B) was not left with unreasonably small capital as a result of such undertaking or payments; and (C) was not left unable to pay debts as they matured as a result of such undertaking or payments.

8. Each year, entities choosing to file on a consolidated basis must file a statement certifying that they meet all of

the above conditions. Such certification also must include: (1) A list of the legal names of all legal entities that are covered by the filing; (2) the Form 499 identification numbers of all legal entities that are covered by the filing; (3) the consolidated filer's FCC Registration Number (FRN); and (4) for wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing. Consolidated filers should file this certification with the Commission's Data Collection Agent. Furthermore, a contributor choosing to file on a consolidated basis should recognize that any penalties associated with failure to pay or with underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis. We direct USAC to begin accepting such consolidated Worksheets in the second quarter of 2002.

9. We also amend § 54.702 by removing § 54.702(f) of our rules. Under § 54.702(f) of our rules, USAC is required to periodically compare information from "Telecommunications Relay Services Fund Worksheets" with information submitted on "Universal Service Worksheets." In 1999, however, the Commission established the FCC Form 499 Telecommunications Reporting Worksheet, which consolidated reporting requirements for the universal service mechanisms, the Telecommunications Relay Services Fund, the cost recovery mechanism for administration of the North American Numbering Plan, and the cost recovery mechanism for administration of long-term number portability. As a result, § 54.702(f) was made obsolete, but inadvertently was not removed at that time. Accordingly, we remove it now.

C. Limited International Revenues Exception

10. We conclude that the limited international revenues exception should be increased from eight to 12 percent. Consistent with section 254(d) of the Act, we conclude that raising the threshold to 12 percent will ensure that a contributor's universal service contribution does not exceed the amount of its interstate end-user telecommunications revenues by providing a margin of safety to account for any possible increases to the contribution factor over time. When the limited international revenues exception was implemented in November 1999, the universal service contribution factor was 5.8995 percent, and the Commission anticipated that the universal service contribution factor would not exceed eight percent in the

near future. The Commission recently established a universal service contribution factor of 6.808 percent. As a result of many factors, including possible decreases in assessable revenues and increases in universal service funding requirements over time, modest increases to the contribution factor may occur in the foreseeable future. If the universal service contribution factor increases to eight percent, a contributor may become obligated to contribute to the universal service mechanisms an amount that exceeds the amount of its interstate end-user telecommunications revenues. With the elimination of "circularity" and anticipated implementation of interstate access support for non-price cap carriers, Commission staff projects that the contribution factor may exceed 8 percent in 2002. This projection is predicated on the removal of prior period universal service contributions from the contribution base, the continuation of the current assessment system based on revenues, anticipated growth in the universal service mechanisms, and continued modest growth in assessable interstate end-user telecommunications revenues. Large-scale migration to services that are not easy to categorize by jurisdiction or marketplace disruptions, such as a prolonged recession, may result in additional increases to the contribution factor over time. We therefore conclude that increasing the threshold to qualify for the international revenues exception to 12 percent will ensure that contributors are not required to contribute more to universal service than they derive from interstate end-user telecommunications revenues. We direct USAC to begin applying the higher threshold to qualify for the international revenues exception in the second quarter of 2002.

11. Our adoption of a 12 percent threshold to qualify for the limited international revenues exception should not be taken as an indication that we expect the contribution factor to rise to that level in the near future. To the contrary, we choose 12 percent because it will provide for a more than adequate margin of safety if the current contribution factor increases over time.

III. Procedural Issues

A. Final Regulatory Flexibility Act Analysis

1. Need for, and Objectives of, the Report and Order

12. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 2001 Notice, (66

FR 28718, May 24, 2001). The Commission sought written public comment on the proposals in the 2001 Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

13. In the Order, we adopt modifications to our current universal service contribution methodology, which will further refine and streamline the assessment of universal service contributions. First, we exclude universal service contributions from contributors' assessable gross-billed interstate telecommunications revenues. This modification addresses "circularity" in our current methodology that may cause contributors to mark-up line items. Second, we amend our rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries. This modification will allow certain carriers to reduce the burdens associated with complying with the reporting requirements of the universal service fund. Third, we increase from eight to 12 percent the amount of domestic interstate revenues a contributor may have and still qualify for the limited international revenue exception to our universal service contribution requirements. Examination of the record in this proceeding demonstrates the need for these modifications, which address specific concerns raised by commenters to the 2001 Notice.

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

14. The Commission received comments related to the needs of small local telephone companies. In particular, the Small Business Administration's Office of Advocacy suggested that the Commission should retain the current contribution methodology to avoid raising the administrative costs on small businesses associated with compliance. While we retain the current methodology, we note that the Commission, concurrent with the issuance of the Order, adopted a Further Notice (published elsewhere in this issue) that seeks comment on proposals to fundamentally reform the contribution methodology. The proposals detailed in the Further Notice of Proposed Rulemaking may result in a program with significantly reduced administrative burdens.

15. In the Order, however, the Commission adopts certain modifications to the existing methodology. In particular, the Commission adopted a proposal suggested by many wireless carriers to

allow certain contributors to file on a consolidated basis, which should alleviate some of the administrative burden associated with complying with the universal service fund. Additionally, the Commission's reform of the limited international revenue exception should help continue to ensure that contributors are not required to contribute more to universal service than they derive from interstate end-user telecommunications revenues. The Commission has through these modifications minimized potential burdens created by its contribution methodology.

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

16. 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 "small entity" as having the same meaning as the term "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, unless the Commission has developed one or more definitions that are appropriate to its activities. 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) meets any additional criteria established by the SBA.

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

18. We have included small incumbent carriers in this RFA analysis. As noted, 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 carriers are not dominant in their field of operation because any such dominance is not

“national” in scope. We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

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

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

21. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA’s definition, a small business telephone company other than

a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA’s definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in the Order.

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

23. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The applicable definition of small entity is the definition under the SBA rules

applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA’s definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends Report*, 806 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA’s definition. We estimate that there are fewer than 806 small cellular service carriers that may be affected by the proposed rules, if adopted.

24. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA’s definition.

25. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order* (62 FR 16004, April 3, 1997), we adopted criteria for defining small and very small

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

26. *Private and Common Carrier Paging.* In the *Paging 220 MHz Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these definitions. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends Report*, 427 carriers reported that they were engaged in the provision of paging and messaging services. We do not have data specifying the number of these carriers that are not independently

owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 427 small paging carriers that may be affected by the decisions and rules adopted in the Order. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

27. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

28. *Narrowband PCS.* To date, two auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average

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

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

30. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we

estimate that almost all of them qualify as small under the SBA definition.

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

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

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

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

34. Pursuant to the Order, the only new or modified reporting requirement is that we amend our rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries. The Commission based its decision in part on the fact that the reduction in administrative costs for these carriers would be significant. The Commission will seek OMB approval for this new or modified reporting requirement when it submits the modified Form 499-Q for approval.

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

35. 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.

36. The Commission has taken numerous steps to minimize significant economic impacts on small entities of modifying the universal service contribution methodology adopted in the Order. By eliminating circularity that exists under the current contribution methodology, we reduce one cause for contributors to recover amounts in excess of the current contribution factor and will help address consumer concerns regarding the disparate recovery of universal service contributions through line items. Further, by amending our rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries, we substantially decrease the administrative burdens of some contributors. We anticipate that many wireless contributors, for example, will choose to file on a consolidated basis. Finally, by increasing the international revenue exception from 8 percent to 12 percent, we ensure that a contributor's universal service obligation does not exceed the amount of its interstate end-user telecommunications revenues.

6. Report to Congress

37. The Commission will send a copy of the Order, including the FRFA analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including the FRFA analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA analysis (or summaries thereof) also will be published in the **Federal Register**.

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

38. None.

8. Paperwork Reduction Act Analysis

39. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirement on the public, although it may eliminate certain reporting requirements for some entities.

IV. Ordering Clauses

40. Pursuant to the authority contained in sections 4(i), 4(j), 254, and 303(r) of the Communications Act of 1934, as amended, the Report and Order is adopted.

41. Part 54 of the Commission's rules, 47 CFR part 54, is amended, effective April 12, 2002.

42. The Commission's Consumer Information Bureau, Reference Information Center shall send a copy of the Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citations continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.702 [Amended]

2. Section 54.702 is amended by removing paragraph (f) and by

redesignating paragraphs (g) through (n) as paragraphs (f) through (m).

3. Section 54.706 is amended by revising paragraphs (b) and (c) to read as follows:

§ 54.706 Contributions.

* * * * *

(b) Except as provided in paragraph (c) of this section, every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and every payphone provider that is an aggregator shall contribute to the federal universal service support mechanisms on the basis of its interstate and international end-user telecommunications revenues, net of prior period actual contributions.

(c) Any entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than 12 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the federal universal service support mechanisms for high cost areas, low-income consumers, schools and libraries, and rural health care providers based only on such entity's interstate end-user telecommunications revenues, net of prior period actual contributions. For purposes of this paragraph, an "entity" shall refer to the entity that is subject to the universal service reporting requirements in 47 CFR 54.711 and shall include all of that entity's affiliated providers of telecommunications services.

* * * * *

4. Section 54.709 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(2) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and a contribution factor determined quarterly by the Commission.

(1) For funding the federal universal service support mechanisms, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of prior period actual contributions.

(2) The quarterly universal service contribution factor shall be determined by the Commission based on the ratio of

total projected quarterly expenses of the universal service support mechanisms to the total end-user interstate and international telecommunications revenues, net of prior period actual contributions. The Commission shall approve the Administrator's quarterly projected costs of the universal service support mechanisms, taking into account demand for support and administrative expenses. The total subject revenues shall be compiled by the Administrator based on information contained in the Telecommunications Reporting Worksheets described in § 54.711(a).

* * * * *

[FR Doc. 02-6028 Filed 3-12-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN: 1018-AH75

Conferring Designated Port Status on Anchorage, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service confers designated port status on Anchorage, Alaska, pursuant to section 9(f) of the Endangered Species Act of 1973. Designated port status will allow the direct importation and exportation of wildlife through this growing international port. A public hearing has been held on this designation.

DATES: This rule is effective March 13, 2002.

FOR FURTHER INFORMATION CONTACT: Special Agent Julie Scully, (703) 358-1949, or Special Agent Stanley Pruszenski, Assistant Regional Director for Law Enforcement, U.S. Fish and Wildlife Service, Anchorage, Alaska, (907) 786-3311.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act requires that all fish and wildlife, with only limited exceptions, be imported and exported through designated ports. Designated ports facilitate U.S. efforts to monitor wildlife trade and enforce wildlife protection laws and regulations by funneling wildlife shipments through a limited number of locations. The Secretary of the Interior, with approval of the Secretary of the Treasury,

designates ports for wildlife trade by regulation after holding a public hearing and considering public comments. The Service presently has 13 designated ports of entry for the importation and exportation of wildlife: Los Angeles, California; San Francisco, California; Miami, Florida; Honolulu, Hawaii; Chicago, Illinois; New Orleans, Louisiana; New York, New York; Seattle, Washington; Dallas/Fort Worth, Texas; Portland, Oregon; Baltimore, Maryland; Boston, Massachusetts; and Atlanta, Georgia. The Service maintains a staff of wildlife inspectors at each designated port to inspect and clear wildlife shipments. Regulatory exceptions allow certain types of wildlife shipments to enter or leave the country through ports that are not designated. Under certain conditions, importers and exporters can obtain a permit from the Service authorizing their use of non-designated ports. The importer or exporter will accrue additional fees associated with the inspection and permit authorizing use of a non-designated port.

Summary of Comments and Information Received

Section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538 (f)(1), requires that the public be given an opportunity to comment at a hearing before the Secretary of the Interior confers designated port status on any port. The Service published a proposed rule in the **Federal Register** of August 20, 2001 (66 FR 43554), to make Anchorage, Alaska, a designated port under section 9 (f) and to announce a public hearing.

Accordingly, the Service held a public hearing on September 17, 2001, beginning at 6 p.m., at the Fish and Wildlife Service Alaska Regional Office, Anchorage, Alaska. The Service received oral comments from two persons in the import and export arena: A manager from the Federal Express Corporation and the director of the Alaska Export Assistance Center, U.S. Department of Commerce.

One commenter stated that his company has supported the Service's effort to designate the Port of Anchorage for a long time. The second commenter said that the opportunity to use Anchorage as a designated port for wildlife trade promised continued expansion of Alaska's business potential and would facilitate increased exports from the State.

Service Response

The Service appreciates the oral comments received at the public hearing in support of the designation of