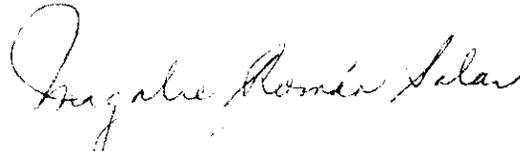


213. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201-205, 208, 222(e), 222(f)(3), 251, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 208, 222(e), 222(f)(3), 303(r), & 403, the Motion for Late-Filed Pleading of Southwestern Bell Corporation IS DENIED.

214. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201-205, 208, 222(e), 222(f)(3), 251, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 208, 222(e), 222(f)(3), 303(r), & 403, the Motion to Dismiss Southwestern Bell's Petition for Reconsideration of Second Report and Order, and Opposition to Motion to Accept Late-Filed Pleading filed by MFS Communications Company, Inc. IS GRANTED.

215. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this THIRD REPORT AND ORDER, SECOND ORDER ON RECONSIDERATION, AND NOTICE OF PROPOSED RULEMAKING, including the associated Final Regulatory Flexibility Analyses and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary



APPENDIX A -- LIST OF PARTIES (CC Docket No. 96-115)

Ad Hoc Telecommunications Users Committee (Ad Hoc)
AGI Publishing (AGI)
AirTouch Communications, Inc. (AirTouch)
Alarm Industry Communications Committee (AICC)
ALLTEL Corporate Services, Inc. (ALLTEL)
American Public Communications Council (APCC)
America's Carrier Telecommunications Association (ACTA)
Ameritech Corp. (Ameritech)
Arch Communications Group, Inc. (Arch)
Association for Local Telecommunications Services (ALTS)
Association of Directory Publishers (ADP)
Association of Telemessaging Services International (ATSI)
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
Cable & Wireless, Inc. (CWI)
California Cable Television Association (CCTA)
California Public Utilities Commission (California Commission)
Cincinnati Bell Telephone (CBT)
Comcast Cellular Communications, Inc. (Comcast)
Competition Policy Institute (CPI)
Competitive Telecommunications Association (CompTel)
Compuserve, Inc. (Compuserve)
Computer Professionals for Social Responsibility (CPSR)
Consolidated Communications, Inc. (Consolidated)
Consumer Federation of America (CFA)
Cox Enterprises, Inc. (Cox)
Direct Marketing Associates (DMA)
Directory Dividends
Equifax, Inc. (Equifax)
Excell Agent Services (Excell Agent)
Excel Telecommunications, Inc. (Excel)
Federal Bureau of Investigation (FBI)
Frontier Corporation (Frontier)
Anthony Genovesi, New York State Assemblyman
GTE Service Corporation (GTE)
INFONXX
Information Industry Association (IIA)
Information Technology Association of America (ITAA)
IntelCom Group (ICG)
Intermedia Communications, Inc. (Intermedia)
LDDS WorldCom Inc. (LDDS Worldcom)

MCI Telecommunications Corporation (MCI)
MFS Communications Company, Inc. (MFS)
MobileMedia Communications, Inc. (MobileMedia)
National Association of Regulatory Utility Commissioners (NARUC)
National Telecommunications and Information Association (NTIA)
National Telephone Cooperative Association and Organization for the Promotion and
Advancement of Small Telephone Companies (NTCA/OPASTCO)
New York Clearinghouse Association, Securities Industry Association, Bankers
Clearinghouse, and Ad Hoc Telecommunications Users Committee (NYCA)
New York State Department of Public Service (New York Commission)
NYNEX Telephone Companies (NYNEX)
Pacific Telesis Group (PacTel)
Paging Network (PageNet)
Pennsylvania Office of Consumer Advocate (PaOCA)
SBC Communications, Inc. (SBC)
Small Business in Telecommunications, Inc. (SBT)
Southern New England Telephone Company (SNET)
Sprint Corporation (Sprint)
Sunshine Pages (Sunshine)
Telecommunications Industry Association (TIA)
Telecommunications Resellers Association (TRA)
Teleport Communications Group, Inc. (TCG)
Public Utility Commission of Texas (Texas Commission)
United States Telephone Association (USTA)
U.S. Small Business Administration, Office of Advocacy (SBA)
U S WEST, Inc. (U S WEST)
Virgin Islands Telephone Corporation (VITELCO)
Washington Utilities and Transportation Commission (Washington Commission)
Wireless Technology Research, L.L.C. (WTR)
Yellow Pages Publishers Association (YPPA)

APPENDIX B -- LIST OF PARTIES (CC Docket No. 96-98)

Petitions for Reconsideration/Clarification, filed by October 7, 1996:

Airtouch Paging and PowerPage (joint comments) (Airtouch)
Ameritech Corp. (Ameritech)
AT&T Corp. (AT&T)
Beehive Telephone Company, Inc. (Beehive)
BellSouth Corporation and BellSouth Telecommunications (BellSouth)
Cox Communications, Inc. (Cox)
Excell Agent Services, Inc. (Excell)
GTE Service Corporation (GTE)
Jan David Jubon/Jubon Engineering, P.C. (Jubon)
MCI Telecommunications Corp. (MCI)
MFS Communications Co., Inc. (MFS)
New York State Dept. of Public Service (NYDPS)
NYNEX Telephone Companies (NYNEX)
Omnipoint Communications, Inc. (Omnipoint)
Paging Network, Inc. (PageNet)
Pennsylvania Public Utility Commission (Pennsylvania Commission)
Rural Telephone Coalition (RTC)
SBC Communications Inc. filed on behalf of its subsidiaries, Southwestern Bell Telephone Company and Southwestern Bell Mobile Systems (SBC)
Teleport Communications Group, Inc. (TCG)
U.S. Telephone Association (USTA)
The Washington Post Company (Washington Post)

Oppositions, filed by November 20, 1996:

Airtouch Communications Inc. (AirTouch)
Ameritech
Arch Communications Group, Inc. (Arch)
AT&T
Bell Atlantic (Bell Atlantic)
Bell Atlantic NYNEX Mobile, Inc. (BANM)
BellSouth
Communications Venture Services, Inc. (CVS)
Cox
GTE
MCI
MFS
National Cable Television Association, Inc. (NCTA)
Public Utilities Commission of Ohio (Ohio Commission)
Pacific Telesis Group (PTG)

Roseville Telephone Company (Roseville)
SBC
Southern New England Telephone Company (SNET)
Sprint Corporation (Sprint)
Telco Planning, Inc. (Telco Planning)
Telecommunications Resellers Association (TRA)
TCG
USTA
U S WEST, Inc. (U S WEST).

Replies, filed by December 5, 1996:

Airtouch
Ameritech
AT&T
BellSouth
Cox
GTE
MCI
MFS
NYNEX
Omnipoint
Paging Network
PCIA
SBC
TCG
USTA

APPENDIX C -- REGULATORY FLEXIBILITY ACT

A. Third Report and Order - Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice* in CC Docket No. 96-115.² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA.³ This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴

1. Need for and Objectives of this Third Report and Order and the Rules Adopted Herein

2. The Commission, in compliance with section 222(e) of the 1996 Act, promulgates rules in this *Third Report and Order* to further Congress' goals of preventing unfair LEC practices in relation to subscriber list information and of encouraging the development of competition in directory publishing. This *Third Report and Order* reflects the statutory mandate that each "telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format."⁵ We conclude that our clarification and particularization of the obligations imposed on carriers by section 222(e) is necessary to achieve Congress' goals in relation to subscriber list information. This approach should reduce confusion and potential controversy with minimal burdens on carriers and directory publishers, many of whom are small businesses.

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, 11 FCC Rcd 12513, 12533-34, ¶¶ 50-58 (1996) (*Notice*).

³ *Id.* at 12534, ¶ 58.

⁴ See 5 U.S.C. § 604.

⁵ 47 U.S.C. § 222(e).

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

3. In the IRFA, the Commission generally stated that any rule changes that might occur as a result of this proceeding could impact small business entities. Specifically, in the IRFA, the Commission indicated there were no reporting, recordkeeping, or other compliance requirements. The IRFA solicited comment on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. In response, we received no comments specifically directed to the IRFA. In making the determinations reflected in this *Third Report and Order*, however, we have considered the impact of our proposed rules on small entities.

3. Description and Estimate of the Number of Small Entities Affected by this Third Report and Order

a. Overview

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by rules.⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁷ For the purposes of this *Third Report and Order*, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act,⁸ unless the Commission has developed one or more definitions that are appropriate to its activities.⁹ 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 Small Business Administration (SBA).¹⁰ 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.¹¹ The SBA has also defined a small business for SIC categories 2754 (commercial printing, gravure) and 2759 (commercial printing, not elsewhere classified) to be small entities when they have no more than 500 employees, and 7389

⁶ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

⁷ 5 U.S.C. § 601(6).

⁸ 15 U.S.C. § 632.

⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

¹⁰ 15 U.S.C. § 632.

¹¹ 13 C.F.R. § 121.201.

(business services, not elsewhere classified), to be small entities when they have gross annual revenues of \$5 million or less. We discuss generally the total number of small telephone companies and small directory publishers falling within these SIC categories. We also discuss the number of small businesses within the subcategories, and attempt to refine our small business estimates to correspond with the categories of telephone companies that are commonly used under our rules, as well as the categories of directory publishers.

5. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."¹² 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.¹³ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

b. Affected Carriers

6. 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.¹⁴ These firms include a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, wireless providers, operator service providers, pay telephone operators, wireless providers, and resellers. At least some of these 3,497 telephone service firms may not qualify as small entities because they are not "independently owned and operated."¹⁵ For example, a wireless provider that is affiliated with a LEC 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 of these telephone service firms are small entities that may be affected by this *Third*

¹² 5 U.S.C. § 601(3).

¹³ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999) (*SBA May 27, 1999 Letter*). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

¹⁴ United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

¹⁵ 15 U.S.C. § 632(a)(1).

Report and Order. Since 1992, however, many new carriers have entered the telephone services marketplace. At least some of these new entrants may be small entities that are affected by this *Third Report and Order*.

i. Wireline Carriers

7. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies that had been operating for at least one year at the end of 1992.¹⁶ According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons.¹⁷ All but 26 of the 2,321 wireline 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 wireline companies that might qualify as small entities. 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 the SBA's definition. Consequently, we estimate that fewer than 2,295 of these wireline companies are small entities that this *Third Report and Order* may affect. Since 1992, however, many wireline carriers have entered the telephone services marketplace. Many of these new entrants may be small entities that are affected by this *Third Report and Order*.

8. The rules adopted in this *Third Report and Order* apply to only those carriers that gather subscriber list information in their capacity as providers of telephone exchange service. Many carriers engaged in providing wireline telephone services do not provide telephone exchange service. Neither the Commission nor the SBA has developed a definition of small providers of telephone exchange services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of wireline carriers nationwide of which we are aware appears to be the data collected annually in connection with Telecommunications Relay Services (TRS).¹⁸ According to the most recent data, 1,410 companies reported that they were engaged in the provision of local exchange services, 129 carriers reported that they were competitive access providers, and 3 companies reported that they were "other local carriers."¹⁹ In addition, 351 companies

¹⁶ 1992 Census, *supra* note 14, at Firm Size 1-123.

¹⁷ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

¹⁸ Federal Communications Commission, *Carrier Locator: Interstate Service Providers*, Figure 1 (Jan. 1999) (*Carrier Locator Report*).

¹⁹ *Id.*

reported that they were engaged in the resale of telephone services.²⁰ Although it seems certain that at least some of these carriers are not independently owned and operated, have more than 1,500 employees, or are dominant, we are unable at this time to estimate with greater precision the number of LECs and competitive access providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,410 providers of local exchange service, fewer than 129 competitive access providers, fewer than 3 other local carriers, and fewer than 351 resellers are small entities or that may be affected by this *Third Report and Order*.

ii. Wireless Carriers

9. The SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.²¹ According to the SBA's definition, a wireless company is a small business if it employs no more than 1,500 persons.²² The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 wireless companies had more than 1,500 employees, there would still be 1,164 wireless companies that might qualify as small entities if they are independently owned and operated. 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 wireless carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,164 of these wireless carriers are small entities that may be affected by this *Third Report and Order*. Since 1992, however, many wireless carriers have entered the telephone services marketplace. At least some of these new entrants may be small entities that are affected by this *Third Report and Order*. This *Third Report and Order* will affect these new entrants as well as other carriers, however, only to the extent that they publish, cause to be published, or accept for publication subscriber list information.

10. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to cellular or other mobile service providers. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of wireless carriers nationwide of which we are aware appears to be the TRS data collected annually. According to the most recent data, 804 companies reported that they were engaged in the provision of cellular services and 172 companies reported that they were

²⁰ *Id.*

²¹ 1992 Census, *supra* note 14.

²² 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

engaged in the provision of mobile services.²³ 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 cellular and other mobile service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 976 small entity cellular and mobile service carriers that may be affected by this *Third Report and Order*.

11. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has defined small entity in the auctions for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.²⁴ 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 revenue of not more than \$15 million for the preceding three calendar years.²⁵ The SBA has approved these regulations defining small entity in the context of broadband PCS auctions. No small business 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 businesses won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. Licenses for Blocks C through F, however, have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

12. The Commission does not know how many narrowband PCS licenses will be granted or auctioned, as it has not yet determined the size or number of such licenses. Two auctions of narrowband PCS licenses have been conducted for a total of 41 licenses, out of which 11 were obtained by small businesses owned by members of minority groups or women. Small businesses were defined as those with average gross revenues for the prior three fiscal years of \$40 million or less.²⁶ For purposes of this FRFA, the Commission is utilizing the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing

²³ *Carrier Locator Report*, *supra* note 18, at Figure 1. This category includes PCS carriers.

²⁴ *Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, ¶¶ 57-60 (1996), 61 FR 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

²⁵ *Id.*

²⁶ *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, PP Docket No. 93-253, and *Amendment of the Commission's Rules to Establish New Narrowband PCS*, GEN Docket No. 90-314, Competitive Bidding Third Memorandum Opinion and Order and Further Notice, 10 FCC Rcd 175, 208 (1994).

no more than 1,500 persons.²⁷ Not all of the narrowband PCS licenses have yet been awarded. There is therefore no basis to determine the number of licenses that will be awarded to small entities in future auctions. Given the facts that nearly all radiotelephone companies have fewer than 1,000 or fewer employees²⁸ and that no reliable estimate of the number of prospective narrowband PCS licensees can be made, we assume, for purposes of the evaluations and conclusions in this FRFA, that all the remaining narrowband PCS licenses will be awarded to small entities.

13. Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. The SBA has approved this definition of a "small entity" in the context of 800 MHz and 900 MHz SMR.²⁹ The rules adopted in this *Third Report and Order* may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities.

14. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this *Third Report and Order* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Thus, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. Moreover, there is no basis on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of

²⁷ 13 C.F.R. § 121.201, Standard Industrial Classification Code 4812.

²⁸ The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. *1992 Census, supra* note 14, at Table 5, Employment Size of Firms: 1992, SIC Code 4812.

²⁹ *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities.

15. The rules adopted in this *Third Report and Order* apply to only those carriers that gather subscriber list information in their capacity as providers of telephone exchange service.³⁰ Many carriers engaged in providing wireless service do not provide telephone exchange service or, if so, do not gather subscriber list information in their capacity as providers of that service. These carriers, even if classified as small entities, will not be affected by this *Third Report and Order*. As a result, it appears certain that at least some of the wireless carriers described above will not be affected by this *Third Report and Order*.

iii. Directory Publishers

16. Many directory publisher are members of either of two trade associations, Association of Directory Publishers (ADP) and Yellow Pages Publishers Association (YPPA). ADP states that it had 169 publisher members in fiscal year 1997. ADP also states that 146 of these publishers have gross revenues of less than \$5 million and thus are small businesses. ADP further states that virtually all of its remaining 23 members began as small, entrepreneurial businesses that have grown through expansion or consolidation with other small publishers in the directory publishing industry.³¹ Consequently, we estimate that 146 ADP members are small entities that may be affected by this *Third Report and Order*.

17. YPPA states that is presently comprised of 123 publisher members and 76 non-member publishers. YPPA also states that these publishers produce over 95 percent of the directories published in North America.³² We have no data on which, if any, of these publishers have gross annual revenues of \$5 million or less. We assume, for purposes of this FRFA, that all of these 199 publishers are small entities that may be affected by this *Third Report and Order*.

18. Collectively, ADP and YPPA publishers produce the vast majority of the directories published in the United States. There likely are additional directory publishers, including entities that publish only Internet directories, that are small entities. In addition, the rules adopted in this *Third Report and Order* may enable other entities to enter directory publishing, consistent with Congress' goal encouraging the development of competition in directory publishing. These new entrants may be small entities.

³⁰ See *Third Report and Order, supra*, at part II.D.

³¹ *ADP June 2, 1998 Letter, supra* note 31.

³² This information may be accessed at http://135.145.21.244/YPPA/About_YPPA.htm.

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

19. In this *Third Report and Order*, we require all telecommunications carriers to provide subscriber list information gathered in their capacity as providers of telephone exchange service to any person upon request for the purpose of publishing directories in any format, including Internet directories. We also define subscriber list information as "the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service) or any combination of such listed names, numbers, addresses, or classifications . . . that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."³³

20. Not only LECs, but all telecommunications carriers, including interexchange carriers, cable operators, and other competitive LECs, must provide subscriber list information gathered in their capacity as providers of telephone exchange service to any person upon request for the purpose of publishing directories.³⁴ Only the carrier that provides a subscriber with telephone exchange service is obligated to provide a particular telephone subscriber's subscriber list information. A carrier need not provide subscriber list information to requesting directory publishers pursuant to section 222(e) unless the carrier gathered that information in its capacity as a provider of telephone exchange service.³⁵

21. The definition of subscriber list information we adopt includes primary advertising classifications only if they are "assigned at the time of the establishment" of telephone exchange service.³⁶ A primary advertising classification is assigned at the time of the establishment of telephone exchange service if the carrier that provides telephone exchange service assigns the classification or if a tariff or State requirement obligates the carrier to provide yellow pages listings as part of telephone exchange service to businesses.³⁷

22. Carriers are obligated to provide updated subscriber list information to requesting directory publishers. For subscribers that have multiple telephone numbers, a carrier must provide requesting directory publishers with each telephone number that it has published, caused to be published, or accepted for publication in a directory.³⁸

³³ See Appendix D, *infra*.

³⁴ See *Third Report and Order*, *supra*, at part II.D.

³⁵ See *id.* at parts II.D & II.F.

³⁶ See Appendix D, *infra*.

³⁷ See *Third Report and Order*, *supra*, at part II.E.2.

³⁸ See *id.* at part II.E.5.

23. Each carrier that gathers subscriber list information in its capacity as a provider of telephone exchange service is obligated to provide that information to requesting directory publishers at the same rates, terms, and conditions that the carrier provides the information to its own directory publishing operation, its directory publishing affiliate, or other directory publishers.³⁹

24. We also require each carrier that is subject to section 222(e) to make available to requesting directory publishers any written contracts that it has executed for the provision of subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf. In addition, to the extent any of a carrier's rates, terms, and conditions for providing subscriber list information for those operations are not set forth in a written contract, the carrier must keep a written record of, and make available to requesting directory publishers, those rates, terms, and conditions. Upon request, the carrier shall also provide these contracts and this information to this Commission. A carrier must not restrict a directory publisher's choice of directory format.⁴⁰

25. A carrier must provide subscriber list information at the time requested by the directory publisher, provided that the directory publisher has given at least thirty days advance notice and the carrier's internal systems permit the request to be filled within that time frame. We require carriers to unbundle subscriber list information, including updates, on any basis requested by a directory publisher that the carrier's internal systems can accommodate. A carrier, in addition, must not require directory publishers to purchase any product or service other than subscriber list information as a condition of obtaining subscriber list information. In unbundling subscriber list information for directory publishers, however, the carrier shall not disclose customer proprietary network information except as permitted by sections 222(c) and (d) of the Communications Act and our implementing rules. Upon request, a carrier that has received at least thirty days advance notice also must provide subscriber list information on any periodic basis that the carrier's internal systems can accommodate.⁴¹

26. If the carrier's systems cannot accommodate the delivery schedule, the level of unbundling, or the format requested by a directory publisher, the carrier must inform the directory publisher of that fact, tell the publisher which delivery schedules, unbundling levels, or formats can be accommodated, and adhere to the schedule, unbundling level, or format the publisher chooses from among those available. The carrier must provide this information within thirty days of when it receives the publisher's request. If this process results in the provision of listings in addition to those the directory publisher requested, the carrier may impose charges for, and the directory publisher may publish, only the requested

³⁹ See *id.* at part II.G.

⁴⁰ *Id.*

⁴¹ *Id.*

listings. A carrier, in addition, must not require directory publishers to purchase any product or service other than subscriber list information as a condition of obtaining subscriber list information.⁴²

27. If a carrier finds that it cannot accommodate all of a group of multiple or conflicting requests for subscriber list information within the specified time frames, the carrier shall respond to those requests on a nondiscriminatory basis. The carrier shall inform each affected directory publisher of the conflicting requests within thirty days of when it receives the publisher's request.⁴³ Within that thirty-day period, the carrier also shall inform each affected directory publisher how it intends to resolve the conflict and the schedule on which it intends to provide subscriber list information to each publisher.

28. In future disputes regarding the sufficiency of a carrier's internal subscriber list information systems, the burden will be on the carrier to show that those systems cannot accommodate the delivery schedule, unbundling level, and format the directory publisher requests.⁴⁴

29. We require carriers to provide requesting directory publishers with notice of changes in subscriber list information to the extent those changes reflect customers' decisions to cease having particular telephone numbers listed.⁴⁵

30. Based on the record before us, we conclude that \$0.04 per listing is a presumptively reasonable rate for base file subscriber list information, as defined below, and that \$0.06 per listing is a presumptively reasonable rate for other subscriber list information, including updates, that carriers provide directory publishers. We do not preclude a carrier from charging subscriber list information rates different from these presumptively reasonable rates. However, any carrier whose rates exceed either of these rates should be prepared to provide cost data and all other relevant information justifying the higher rate in the event a directory publisher files a complaint regarding that rate pursuant to section 208 of the Communications Act. Absent credible and verifiable data showing that the carrier's costs, including a reasonable profit, exceed the applicable presumptively reasonable rate, the Bureau or the Commission, depending on the circumstances, shall conclude that the rate is unreasonable and award damages accordingly.⁴⁶

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *See id.* at part II.H.

31. In the event a directory publisher files a complaint regarding a carrier's subscriber list information rates, the carrier must present a cost study providing credible and verifiable cost data to justify each challenged rate. This cost study must clearly and specifically identify and justify:

a. Incremental Costs. Each specific function the carrier performs solely to provide subscriber list information to the complainant; and the incremental costs the carrier incurs in performing each of these specific functions.

b. Common Costs. The cost the carrier incurs in creating and maintaining its subscriber list information database and the methods the carrier uses to allocate that cost among supported services.

c. Overheads. Any other costs the carrier incurs to support its provision of subscriber list information to the complainant; the other activities those costs support; and the methods the carrier uses to allocate those costs.

d. Other Information. The projected average number of listings the carrier provides to directory publishers and, if applicable, to other entities in a year; the rate of return on investment and depreciation costs the carrier uses in calculating its subscriber list information rates; and any other information necessary to make clear the carrier's costing process.

The carrier should provide this information separately for both base file and updated subscriber list information if the complainant challenges both types of rates. We also expect the carrier to describe how its methods for allocating common costs compare to those the carrier uses in other contexts. In the absence of cost data showing that the carrier's costs exceed the presumptively reasonable rates, the Bureau or the Commission, depending on the circumstances, shall find in favor of the plaintiff, and award damages accordingly.⁴⁷

32. We require that directory publishers be allowed to purchase updated subscriber list information rather than having to repurchase a carrier's entire subscriber list information database each time the publisher wishes to update its own database.⁴⁸

33. Carriers may require directory publishers to certify that they will use subscriber list information obtained pursuant to section 222(e) only for directory publishing purposes. The certification may be either oral or written, at the carrier's option.⁴⁹

⁴⁷ See *id.* at part II.H.6.

⁴⁸ See *id.* at parts II.E.4 & II.J.2.

⁴⁹ See *id.* at part II.J.4.

5. Significant Alternatives and Steps Taken by Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

34. After consideration of possible alternatives, we conclude in the *Third Report and Order* that our clarification and particularization of the obligations imposed on carriers by section 222(e) is necessary to achieve Congress' goals in relation to subscriber list information. Our decision to act in this *Third Report and Order*, rather than exclusively through case-by-case adjudication, will reduce confusion and potential controversy with minimal burdens on carriers and directory publishers, many of whom are small entities.

35. As indicated above, our actions in this *Third Report and Order* will affect both carriers and directory publishers that, for purposes of the FRFA, we assume are classified as small entities. The record in this proceeding reflects the carriers' and directory publishers' conflicting views as to the meaning of the statutory language and, in particular, as to the application of statutory terms, such as "timely" and "reasonable," to specific situations.⁵⁰ The record also makes clear that these disputes may have prevented full realization of Congress' goals of preventing unfair carrier practices in relation to subscriber list information and encouraging the development of competition in directory publishing.⁵¹

36. In resolving these disputes, we have considered significant alternatives, such as allowing value-based rates for subscriber list information carriers provide directory publishers. In choosing among the various alternatives, we have sought to minimize the adverse economic impact on carriers, including those that are small entities. We recognize, however, that Congress intended section 222(e) to prevent carriers from deriving economic benefits from refusing to provide subscriber list information on a timely and unbundled basis, charging discriminatory or unreasonable rates for that information, or imposing discriminatory or unreasonable terms or conditions in connection with the provision of that information. In implementing that section, we have sought to eliminate those benefits.⁵²

37. As discussed in this *Third Report and Order*, we recognize that the ability of independent directory publishers to improve customer service and to develop new products is dependent on telecommunications carriers' understanding and complying with their obligations under section 222(e).⁵³ Many independent directory publishers are small, entrepreneurial businesses. Our actions in this *Third Report and Order* will benefit these directory publishers by facilitating their directory publishing operations. Those actions also

⁵⁰ See, e.g., *id.* at part II.H.

⁵¹ See *id.* at part II.C.

⁵² See *id.* at part II.H.

⁵³ See *id.* at part II.C.

will eliminate barriers to entering the directory publishing market, and thus benefit small entities as they take that step. In general in this *Third Report and Order*, we have attempted to implement section 222(e) in a manner that keeps burdens on carriers to a minimum while ensuring that directory publishers, including new entrants, are able to compete based on the quality of their directories. We believe that this *Third Report and Order* furthers our commitment to minimizing regulatory burdens on small entities in accordance with statutory requirements.

6. Report to Congress

38. The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Third Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Third Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

B. Second Order on Reconsideration - Supplemental Final Regulatory Flexibility Analysis

39. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in CC Docket No. 96-98.⁵⁴ The Commission sought written public comment on the proposals in this *NPRM*, including the IRFA.⁵⁵ In addition, pursuant to section 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Local Competition Second Report and Order*. That FRFA conformed to the RFA, as amended.⁵⁶ A Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) is contained herein. This Supplemental FRFA also conforms to the RFA, as amended.

1. Need for and Objectives of the Second Order on Reconsideration and the Rules Adopted Herein

40. The need for and objectives of the rules adopted in this *Second Order on Reconsideration* are the same as those discussed in the FRFA in the *Local Competition Second Report and Order*. In general, these rules implement the Congressional goal of

⁵⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking, 11 FCC Rcd 14171, 14265-66, ¶¶ 274-87 (1996) (*Local Competition NPRM*).

⁵⁵ *Id.* at 14266, ¶ 286.

⁵⁶ *See* 5 U.S.C. § 604.

opening local exchange and exchange access markets to competition by eliminating certain operational barriers to competition. The Commission promulgated rules pursuant to section 251(b)(3), (c)(5), and (e)(1) of the Act in the *Local Competition Second Report and Order*. In this *Second Order on Reconsideration*, we grant in part and deny in part several of the petitions filed for reconsideration and/or clarification of the *Local Competition Second Report and Order*.⁵⁷ We conclude that a LEC shall permit competing providers of telephone exchange service and telephone toll service access to its directory assistance services, including directory assistance databases.⁵⁸ In addition, we clarify that, upon request, a LEC shall provide access to its directory assistance services, including directory assistance databases, and to its directory listings in readily accessible electronic, magnetic tape, or other format specified by the competing provider, if the LEC's internal systems can accommodate that format. In addition, LECs must supply updates to the requesting LEC in the same manner as the original transfer and at the same time that it provides updates to itself.⁵⁹

2. Summary of Significant Issues Raised in Response to the FRFA

41. In the FRFA, the Commission concluded that rules set forth in the *Local Competition Second Report and Order* would have a significant impact on a number of entities, many that could be small business concerns. The rules we adopted regarding nondiscriminatory access apply to all LECs. These rules also affect interexchange carriers, providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under section 90.629 of the Commission's rules.⁶⁰ Our rules apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network. Additional business entities affected by the rules include providers of telephone toll service, providers of telephone exchange service, independent operator services providers, independent directory assistance providers, independent directory listing providers, independent directory database managers, and resellers of these services.

42. We recognized that our rules might have significant economic impacts on a substantial number of small businesses. We discussed the reporting requirements imposed in the *Local Competition Second Report and Order*. Finally, we discussed the steps taken to minimize the impact on small entities, consistent with our stated objectives. We concluded that our actions in the *Local Competition Second Report and Order* would benefit small entities by facilitating their entry into the local exchange and exchange access markets.

⁵⁷ See *Second Order on Reconsideration*, *supra* at part III.

⁵⁸ See *id.*

⁵⁹ See *id.* at part III.E.

⁶⁰ 47 C.F.R. § 90.629.

43. In the pleadings considered in this *Second Order on Reconsideration*, we received no argument or comment specifically directed to the FRFA. In making the determinations reflected in this *Second Order on Reconsideration*, however, we have considered the impact of actions on small entities.

3. Description and Estimate of the Number of Small Entities Affected by this Second Order on Reconsideration

44. We have included small incumbent LECs in this Supplemental 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."⁶¹ 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.⁶² We have therefore included small incumbent LECs in this Supplemental RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

45. *Total Number of Telephone Companies Affected.* The decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. 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.⁶³ These firms include a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator services 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 because they are not "independently owned and operated."⁶⁴ 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 that may be affected by this *Second Order on Reconsideration*. Since

⁶¹ 5 U.S.C. § 601(3).

⁶² *SBA May 27, 1999 Letter, supra* note 13. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

⁶³ *1992 Census, supra* note 14, at Firm Size 1-123.

⁶⁴ 15 U.S.C. § 632(a)(1).