

APPENDIX A

PROPOSED RULE CHANGES

I. Title 47, part 22 of the Code of Federal Regulations, 47 CFR part 22, is amended as follows:

1. The authority citation for part 22 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Section 22.323 is amended by revising it in its entirety to read as follows:

§ 22.323 Incidental communication services.

Carriers authorized to operate stations in the Public Mobile Services may use these stations to provide other telecommunications services incidental to the primary public mobile service(s) for which the authorizations were issued.

3. Section 22.367 is amended by removing and reserving paragraph (a)(4) and by revising paragraph (d), to read as follows:

§ 22.367 Wave polarization.

* * * * *

(a) * * *

(4) [Reserved]

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(d) *Any polarization.* Base, mobile and auxiliary test transmitters in the Cellular Radiotelephone Service are not limited as to wave polarization. Public Mobile Service stations transmitting on channels higher than 960 MHz are not limited as to wave polarization.

4. Section 22.377 is amended by removing paragraph (c).

5. Section 22.901 is amended to read as follows:

§ 22.901 Cellular service requirements and limitations.

The licensee of each cellular system is responsible for ensuring that its cellular system operates in compliance with this section. Each cellular system must provide either mobile service, fixed service, or a combination of mobile and fixed service, *subject to* the requirements, limitations and exceptions in this section. Mobile service provided may be of any type, including two-way radiotelephone, dispatch, one-way or two-way paging, and personal communications services (as defined in Part 24 of this chapter). Fixed service is considered to be primary service, as is mobile service. When both mobile and fixed service are provided, they are considered to be

co-primary services. In providing cellular services, each cellular system may incorporate any technology that meets all applicable technical requirements in this part.

Section 22.905 is revised to read as follows:

§ 22.905 Frequency bands.

The following frequency bands are allocated for assignment to service providers in the Cellular Radiotelephone Service.

(a) Channel Block A: 869 – 880 MHz paired with 824 – 835 MHz, and 890 – 891.5 MHz paired with 845 – 846.5 MHz.

(b) Channel Block B: 880 – 890 MHz paired with 835 – 845 MHz, and 891.5 – 894 MHz paired with 846.5 – 849 MHz

6. Section 22.911 is amended by revising paragraphs (b)(1) and (b)(3), to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(b) * * *

(1) The alternative CGSA determination must define the CGSA in terms of distances from the cell sites to the 32 dB μ V/m contour along the eight cardinal radials, with points in other azimuthal directions determined by the method given in paragraph (a)(6) of this section. * * *

* * * * *

(3) The provision for alternative CGSA determinations was made in recognition that the formula in paragraph (a)(1) of this section is a general model that provides a reasonable approximation of coverage in most land areas, but may substantially under-predict or over-predict coverage in specific areas with unusual terrain roughness or features, and may be inapplicable for certain purposes, *e.g.*, cells with a coverage radius of less than 8 kilometers (5 miles). * * *

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7. Section 22.915 is removed.

8. Section 22.917 is revised to read as follows:

§ 22.917 Emission limitations for cellular equipment.

The rules in this section govern the spectral characteristics of emissions in the Cellular Radiotelephone Service.

(a) *Out of band emissions.* The power of any emission outside of the authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least $43 + 10 \log(P)$ dB.

(b) *Measurement procedure.* Compliance with the limitation in paragraph (a) is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or more. However, for measurements within 1 MHz of the center of the main emission bandwidth, a resolution bandwidth of not less than 1% of the main emission bandwidth may be employed. For the purpose of this section, the main emission bandwidth is the continuous width of the signal outside of which all emissions are attenuated by at least 26 dB below the transmitting power. Either peak or average measurements may be used, provided that both the emissions and the reference transmitter power are measured the same way. When measuring emissions, the transmitter must be set to operate as close to each of the upper and lower channel block edges as the design permits for normal operation.

(c) *Alternative out of band emission limit.* Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

(d) *Interference caused by out of band emissions.* If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

9. Section 22.919 is removed.

10. Section 22.921 is amended to read as follows:

§ 22.921 911 call processing procedures; 911-only calling mode.

Mobile telephones manufactured after February 13, 2000 that are capable of operating in the analog mode described in the standard publication ANSI TIA/EIA-553-A-99 "Mobile Station – Base Station Compatibility Standard" (published November 1, 1999 - available for purchase from Global Engineering Documents, 15 Inverness East, Englewood, CO 80112), must incorporate a special procedure for processing 911 calls. Such procedure must recognize when a 911 call is made and, at such time, must override any programming in the mobile unit that determines the handling of a non-911 call and permit the call to be transmitted through the analog systems of other carriers. This special procedure must incorporate one or more of the 911 call system selection processes endorsed or approved by the FCC.

11. See Section III.B.1, *supra*, for discussion relating to Section 22.933.

12. Section 22.937 is amended by revising it to read as follows:

§ 22.937 Demonstration of financial qualifications in cellular renewal proceedings.

Each applicant for a new cellular system whose application is competing with a cellular renewal application must demonstrate that it has, at the time the application is filed, either a firm financial commitment, an irrevocable letter of credit or a performance bond in the amount of its realistic and prudent estimated costs of construction and any other expenses to be incurred during the first year of operating its proposed system (the irrevocable letter of credit or performance bond must be from the type of financial institution described in paragraph (b) of this section), or available resources, as defined in paragraph (c) of this section, necessary to construct and operate its proposed cellular system for one year.

(a) The firm financial commitment may be contingent on the applicant obtaining an authorization. The applicant must also list all of its realistic and prudent estimated costs of construction and any other expenses to be incurred during the first year of operating its proposed system.

(b) The firm financial commitment required above shall be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier; shall specify the terms of the loan or other form of credit arrangement, including the amount to be borrowed, the interest to be paid, the amount of the commitment fee and the fact that it has been paid, the terms of repayment and any collateral required; and shall contain a statement:

(1) That the lender has examined the financial conditions of the applicant, including audited financial statements where applicable, and has determined that the applicant is creditworthy;

(2) That the lender has examined the financial viability of the proposal for which the applicant intends to use the commitment;

(3) That the lender is committed to providing a sum certain to the particular applicant;

(4) That the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and,

(5) That the commitment is not in any way guaranteed by an entity other than the applicant.

(c) An applicant intending to rely on personal or internal resources must submit:

(1) Audited financial statements certified within one year of the date of the cellular application, indicating the availability of sufficient net current assets to construct and operate the proposed cellular system for one year;

(2) A balance sheet current within 60 days of the date of filing its application that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed cellular system for one year; and,

(3) A certification by the applicant or an officer of the applicant organization attesting to the validity of the unaudited balance sheet.

(d) Applicants intending to rely upon financing obtained through a parent corporation must submit the information required by paragraph (c) of this section, as the information pertains to the parent corporation.

(e) As an alternative to relying upon a firm financial commitment, an irrevocable letter of credit, or a performance bond from a financial institution as described in paragraph (b) of this section, an applicant may state that it has placed in an escrow account sufficient cash to meet its construction and first-year operating expenses. Such a statement must specify the amount of cash, the escrow account number and the financial institution where the escrow account is located.

(f) Any competing application filed against the renewal application of an incumbent cellular system licensee that does not demonstrate, at the time it is initially filed, that the competing applicant has sufficient funds to construct and operate for one year its proposed cellular system will be dismissed.

13. Section 22.941 is revised to read as follows:

§ 22.941 System identification numbers.

System identification numbers (SIDs) are transmitted by cellular systems to cellular telephones in their areas. Reception of a SID so transmitted enables cellular telephones to establish whether they would be in a "home" or "roamer" status when receiving service from the cellular system. The SID of a cellular system is also programmed into the cellular telephones that are subscribed to that system. A cellular telephone transmits the programmed SID (among other numbers) when seeking service from a cellular system, enabling that system to determine whether the telephone is one of its subscribers or a roamer; and if a roamer, what the home system of that cellular telephone is. SIDs are also used for various billing purposes.

(a) Each cellular system must have at least one SID that is associated uniquely with it. Cellular system licensees must coordinate the usage of SIDs to ensure that this requirement is met.

(b) Cellular systems may transmit only their SID(s) or the SID(s) of other cellular systems. A cellular system may transmit the SID(s) of another cellular system only if the licensee of that system concurs with such use of its SID.

14. Section 22.943 is amended by revising it to read as follows:

§ 22.943 Limitations on transfer of control and assignment for authorizations issued as a result of a comparative renewal proceeding.

Except as otherwise provided in this section, the FCC does not accept applications for consent to transfer of control or for assignment of the authorization of a cellular system that has been acquired by the current licensee for the first time as a result of a comparative renewal proceeding until the system has provided service to subscribers for at least three years.

(a) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a part of a *bona fide* sale of an on-going business to which the cellular operation is incidental.

(b) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a result of the death of the licensee.

(c) The FCC may accept and grant applications for consent to transfer of control or for assignment of authorization if the transfer or assignment is *pro forma* and does not involve a change in ownership.

15. Section 22.945 is removed.

16. Section 22.946 is amended by revising it in its entirety to read as follows:

§ 22.946 Service commencement and construction periods for cellular systems.

This section specifies the service commencement and construction requirements for cellular systems. Related rule provisions and notification requirements are contained in § 1.946 of this chapter.

(a) *Commencement of service.* Each new cellular system licensed in markets 91-306 must be partially constructed and begin providing service to subscribers within 18 months. All other cellular systems must be at least partially constructed and begin providing service to subscribers within 12 months, beginning on the date of grant of the initial authorization. The grant of any subsequent authorizations (such as for major modifications) do not extend this period. To satisfy this requirement, a cellular system must be interconnected with the public switched telephone network (PSTN) and must be providing service to mobile stations operated by its subscribers and roamers. A cellular system is considered to be providing service only if mobile stations can originate telephone calls to and receive telephone calls from wireline telephones through the PSTN.

NOTE TO PARAGRAPH (A) OF § 22.946: The *first* cellular system authorized on each channel block in markets 1 through 90, inclusive, was allowed 36 months, rather than 12 months, to commence providing service. The *first* cellular system authorized on each channel block in markets *other than* markets 1 through 90, inclusive, was allowed 18 months, rather than 12 months, to commence providing service. These longer startup periods that were afforded to first-authorized cellular systems have all elapsed.

(b) *Construction period for specific facilities.* The construction period applicable to specific new or modified cellular facilities for which a separate authorization is granted is one year, beginning on the date the authorization is granted.

II. Title 47, part 24 of the Code of Federal Regulations, 47 CFR part 24, is amended as follows:

1. The authority citation for part 24 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

2. Section 24.238 is revised to read as follows:

§ 24.238 Emission limitations for Broadband PCS equipment.

The rules in this section govern the spectral characteristics of emissions in the Broadband Personal Communications Service.

(a) *Out of band emissions.* The power of any emission outside of the authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least $43 + 10 \log(P)$ dB.

(b) *Measurement procedure.* Compliance with the limitation in paragraph (a) is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or more. However, for measurements within 1 MHz of the center of the main emission bandwidth, a resolution bandwidth of not less than 1% of the main emission bandwidth may be employed. For the purpose of this section, the main emission bandwidth is the continuous width of the signal outside of which all emissions are attenuated by at least 26 dB below the transmitting power. Either peak or average measurements can be used, provided that both the emissions and the reference transmitter power are measured the same way. When measuring emissions, the transmitter must be set to operate as close to each of the upper and lower frequency block edges as the design permits for normal operation.

(c) *Alternative out of band emission limit.* Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

(d) *Interference caused by out of band emissions.* If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),¹²¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and proposals in this Notice of Proposed Rulemaking (NPRM), WT Docket No. 01-108. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of this NPRM, as set forth in Section IV.C., *supra*, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA.¹²² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.¹²³

A. Need for, and Objectives of, the Proposed Rules

As part of our 2000 biennial regulatory review pursuant to Section 11 of the Communications Act of 1934, as amended (Communications Act), we are required to review all of our regulations that are applicable to providers of telecommunications service to determine whether any rule is no longer in the public interest. More specifically, in the *Biennial Review Report*, the Commission indicated that it would initiate a rulemaking proceeding to identify and address potentially outdated technical rules governing cellular service, based on the staff's recommendations that were included in the *Biennial Review Staff Report*.¹²⁴ The staff report notes that many of the Part 22 technical rules regulating cellular telephone service date back to the inception of the service in the early 1980s and, given the significant technological changes and growth in competition for cellular services since that time, the rules may be obsolete. In particular, the *Notice* seeks comment on elimination of the cellular analog compatibility standard and the Electronic Serial Number (ESN) rule, as well as modifying several other technical rules.¹²⁵ In the same vein, some of the cellular anti-trafficking rules may be outdated because they were adopted during a period when the Commission resolved

¹²¹ 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).

¹²² See 5 U.S.C. § 603(a).

¹²³ *Id.*

¹²⁴ Biennial Regulatory Review, CC Docket No. 00-175, *Report*, FCC 00-456 (adopted December 29, 2000; released January 17, 2001) (*Biennial Review Report*); Biennial Regulatory Review 2000 Updated Staff Report, released January 17, 2001 (*Biennial Review Staff Report*).

¹²⁵ The specific technical rules include: Sections 22.367(a)(4), 22.901, 22.905, 22.911, 22.915, 22.917, 22.919, 22.933, 22.941, and 22.946 of the Commission's rules.

mutually exclusive applications for initial cellular services through lottery, rather than the current system of resolving such mutually exclusive applications through competitive bidding.¹²⁶ We also take this opportunity to reevaluate certain other Part 22 rules that apply both to cellular and to other CMRS, specifically Section 22.323, which imposes conditions on the provision of “incidental” services by Public Mobile Services providers.¹²⁷

B. Certification Regarding Broadband PCS

With regard to broadband Personal Communications Service (PCS), we certify, pursuant to the RFA, that the proposed changes to Section 24.238, emissions limitations, would not have “a significant economic impact on a substantial number” of small broadband PCS providers.¹²⁸ The proposed changes to this rule would reduce the compliance burden on these entities by allowing these entities greater flexibility to establish out-of-band emissions limits to be used at specified band edges.¹²⁹ Specifically, the proposed Section 24.238(c) would allow parties to establish alternative out-of-band emissions limits pursuant to private contractual arrangements – a practice that is not permitted by the current rule. This proposal would effectively codify and expand upon a waiver that the Wireless Telecommunications Bureau (Bureau) granted for all broadband PCS licensees in August 2000.¹³⁰ In that waiver grant, the Bureau waived Section 24.238 “insofar as it limits out-of-band emissions on: (1) adjacent contiguous frequency blocks that are separately assigned to the same PCS licensees, and (2) adjacent contiguous frequency blocks that are assigned to different PCS licensees who have entered into an agreement(s) concerning interference protection to the adjacent spectrum.”¹³¹ The proposed rule change would allow somewhat more flexibility to licensees because it would not limit a licensee’s ability to contract for alternative emissions limitations to only those frequency blocks that are both adjacent and contiguous. Because our proposed change would effectively codify a waiver that permits greater flexibility for broadband PCS licensees, the proposed changes to Section 24.238 would not have a significant economic impact on broadband PCS providers.

C. Legal Basis

The potential actions on which comment is sought in this NPRM would be authorized under Sections 1, 4(i), 11, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 161, and 303(r).

¹²⁶ The specific cellular anti-trafficking rules include: Sections 22.937, 22.943, and 22.945 of the Commission’s rules.

¹²⁷ See 47 C.F.R. § 22.323.

¹²⁸ See 5 U.S.C. § 605.

¹²⁹ See para. 42, *supra*.

¹³⁰ Omnipoint Request for Broadband Declaratory Ruling or Waiver Concerning PCS Emissions Limits Rule Section 24.238, DA 00-1767, 15 FCC Rcd. 13,422 (2000).

¹³¹ *Id.* at ¶ 1.

D. Description and Estimate of the Small Entities Subject to the Rules

The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the Agency certifies that “the rule will not, if promulgated, have a significant impact on a substantial number of small entities.”¹³² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹³³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹³⁴ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹³⁵ This IRFA describes and estimates the number of small-entity licensees and manufacturers that may be affected if the proposals in this NPRM are adopted.

This NPRM could result in rule changes that, if adopted, would affect small businesses that currently are or may become Cellular Radiotelephone Service providers that are regulated under Subpart H of Part 22 of the Commission’s rules. In addition, the proposed changes to Section 22.323 of the Commission’s rules would, if adopted, affect service providers that are regulated under any provisions of Part 22 of the Commission’s rules. These include, in addition to Cellular Radiotelephone Service providers, providers of Paging and Radiotelephone (Common Carrier Paging), Air-Ground Radiotelephone, Offshore Radiotelephone, and Rural Radiotelephone services. In addition, pursuant to Section 90.493(b) of the Commission’s rules, paging licensees on exclusive channels in the 929-930 MHz bands are subject to the licensing, construction, and operation rules set forth in Part 22.¹³⁶ As this rulemaking proceeding applies to multiple services, we will analyze the number of small entities affected on a service-by-service basis. In addition to service providers, some of the proposed rule changes may also affect manufacturers of cellular telecommunications equipment. We will include a separate discussion regarding the number of small cellular equipment manufacturing entities that are potentially affected by the proposed rule changes.

1. **Cellular Radiotelephone Service.** Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to

¹³² 5 U.S.C. § 603(b)(3).

¹³³ *Id.* § 601(6).

¹³⁴ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” *Id.*

¹³⁵ Small Business Act, 15 U.S.C. § 632 (1996).

¹³⁶ See 47 C.F.R. § 90.493(b).

radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹³⁷ 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.¹³⁸ Therefore, 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. In addition, according to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or PCS, which are placed together in the data.¹³⁹ 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 thus 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. Consequently, we estimate that there are 808 or fewer small cellular service carriers that may be affected by these proposals, if adopted.

2. **Paging.** The Commission has adopted, and the SBA has approved, a two-tier definition of small businesses in the context of auctioning licenses in the paging services. Under this definition, a small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. The Commission has estimated that as of January 1998, there were more than 600 paging companies in the United States.¹⁴⁰ We do not have data specifying the number of these carriers that are not independently owned and operated or meet the small business thresholds set forth above, or the number of these carriers that are regulated under Part 22 of the Commission's rules, and thus are unable at this time to estimate with precision the number of affected paging carriers that would qualify as small business concerns under our definition. However, we estimate that the majority of existing paging providers qualify as small entities under our definition. Consequently, we estimate that there are up to approximately 600 currently licensed small paging carriers that may be affected by the rule changes proposed in the NPRM. In addition, high bids were placed at auction in March 2000 for 985 new geographic area paging licenses, and an additional 15,645 geographic area paging licenses are expected to be awarded following future auctions. In the March 2000 auction, high bids were placed on paging licenses by 57 entities that qualify as small businesses under the Commission's definition. Licenses have been granted to 56 of these entities, and the application of the

¹³⁷ 13 C.F.R. § 121.201, SIC code 4812.

¹³⁸ 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

¹³⁹ See *Telecommunications Industry Revenues: 1999*, Industry Analysis Division, Common Carrier Bureau (Sept. 2000).

¹⁴⁰ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Third Report*, 13 FCC Rcd 19746, 19792 (1998).

other entity remains pending. Thus, in addition to existing licensees, should the Commission adopt the rule changes proposed in the NPRM either 57 or 58 license winners in the recent auction would be affected small entities, and up to 15,645 winners of paging licenses in future auctions would be affected small entities.

3. **Air-Ground Radiotelephone Service.** The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service.¹⁴¹ Accordingly, we use the SBA 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 the Commission estimates that almost all of them qualify as small entities under the SBA definition.

4. **Offshore Radiotelephone Service.** This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission has not adopted a definition of small business specific to the Offshore Radiotelephone Service. Accordingly, we use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

5. **Rural Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.¹⁴² A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).¹⁴³ We therefore use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

6. **Cellular Equipment Manufacturers.** Some of the proposed actions in the NPRM will also affect manufacturers of cellular equipment. The Commission does not know how many cellular equipment manufacturers are in the current market. The 1994 County Business Patterns Report of the Bureau of the Census estimates that there are 920

¹⁴¹ Air-ground radiotelephone service is defined in Section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

¹⁴² Rural Radiotelephone Service is defined in Section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

¹⁴³ BETRS is defined in Sections 22.757 and 22.729 of the Commission's rules, 47 C.F.R. §§ 22.757, 22.729.

companies that make communications subscriber equipment. This category includes not only cellular equipment manufacturers, but television and AM/FM radio manufacturers as well. Thus, the number of cellular equipment manufacturers is considerably lower than 920. Under SBA regulations, a "communications equipment manufacturer," which includes not only U.S. cellular equipment manufacturers but also firms that manufacture radio and television broadcasting and other communications equipment, must have a total of 750 or fewer employees in order to qualify as a small business concern.¹⁴⁴ Census Bureau data from 1992 indicate that at that time there were an estimated 858 such U.S. manufacturers and that 778 (91%) of these firms had 750 or fewer employees and would therefore be classified as small entities.¹⁴⁵ Using our current estimate of cellular equipment manufacturers and the previous percentage estimate of small entities, we estimate that our current action may affect approximately 837 small cellular equipment manufacturers.

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

This NPRM neither proposes nor anticipates any additional reporting, recordkeeping or other compliance measures.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for 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.¹⁴⁶

As stated earlier, several of the Commission's technical and anti-trafficking cellular rules may be outdated. Therefore, modifying or eliminating these rules should decrease the costs associated with regulatory compliance for cellular service providers, provide additional flexibility in manufacturing cellular equipment, and also enhance the market demand for some products. Also, amending or deleting the incidental services rules may allow licensees in the Part 22 services greater flexibility in the types of services they offer. In the NPRM, the Commission has set forth various options it is considering for each rule, from modifying rules to eliminating them altogether. As discussed in the NPRM, the effect of any rule change on the regulatory burden of both licensees and

¹⁴⁴ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 3663.

¹⁴⁵ U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC code 3663 (estimate created by the Census Bureau under contract to the Office of Advocacy, SBA).

¹⁴⁶ See 5 U.S.C. § 603.

equipment manufacturers will be a significant criterion in determining appropriate Commission action.

We note that the entire intent underlying our actions here is to lessen the levels of regulation, consistent with our mandate for undertaking biennial reviews. We have therefore described, *supra*, various alternatives to lessen the regulatory burden on carriers and equipment manufacturers, including small entities. We seek comment on any additional appropriate alternatives.

G. Federal Rules that May Duplicate, Overlap or Conflict with the Proposed Rules
None.

**SEPARATE STATEMENT OF
COMMISSIONER GLORIA TRISTANI**

Re: *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, Notice of Proposed Rulemaking*

As part of our Section 11 biennial review process, this Notice proposes to modify or eliminate numerous rules that apply to the Cellular Radiotelephone Service – the two cellular licenses – under Part 22 of the Commission’s rules. Many of these rules date back to the inception of this service in the early 1980s, and it is time we conduct a thorough review. I have some concerns, however, and write separately to express my view that the Commission should look hard at consumer interests and, in particular, the interests of Americans with disabilities, as we engage in our upcoming debate.

While most of us have access to a full array of exciting wireless services and innovative applications, millions of Americans with hearing and speech disabilities are limited to analog-based service offerings. To date, digital wireless technology is still not compatible with text telephone (TTY) devices and most hearing aids. Time and again, the Commission has granted digital technology-based wireless providers extensions and exemptions from compatibility requirements.¹ In reaching these decisions, I have found some level of comfort in the knowledge that during the interim the disability community has had the choice of two analog cellular providers in each market. I remain committed to that choice as long as digital wireless technology remains inaccessible.

Without question, there are consumer and public interest benefits to migrating from analog to digital wireless services: higher quality service offerings, additional service features, and more efficient use of the spectrum, to name a few. In my judgement, however, the fundamental ability of all Americans – including Americans

¹ Since 1997, the Commission has suspended the E-911 rule requiring service providers to pass on TTY calls as it applies to digital wireless systems. See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Memorandum, Opinion and Order*, 12 FCC Rcd 22665, ¶ 59 (*E-911 Proceeding*) (suspending enforcement of TTY requirement until October 1, 1998); *E-911 Proceeding Order*, 13 FCC Rcd 21746, ¶ 8 (1998) (Wireless Telecommunications Bureau Order extending suspension through November 15, 1998); *E-911 Proceeding Order*, 14 FCC Rcd 694, ¶ 10 (1998) (Wireless Telecommunications Bureau Order extending suspension through December 31, 1998); *E-911 Proceeding Order*, 14 FCC Rcd 1700, ¶ 4 (1998) (granting over 100 temporary waivers of the rule); *Order*, 14 FCC Rcd 3304 (1999); *E-911 Proceeding Fourth Report and Order*, FCC 00-436, CC Docket No. 94-102 (rel. Dec. 14, 2000) ¶¶ 27-8 (establishing June 30, 2002 as the deadline for digital wireless providers to be capable of transmitting 911 calls made using TTY devices). The Hearing Aid Compatibility Act of 1988 exempted “telephones used with public mobile services” from mandatory compatibility. 47 U.S.C. § 610(b)(2)(A)(i); see 47 C.F.R. § 68.4(a). The Commission, however, is statutorily required to “periodically assess” this exemption. 47 U.S.C. § 610(b)(2)(C). Today, digital wireless devices are not hearing aid compatible. We have before us a request to review this exemption. See Letter from the Wireless Action Coalition to William Caton, Secretary, FCC (Oct. 7, 2000). I believe we should move ahead and assess the exemption.

with disabilities – to access wireless telecommunications services must be paramount. It is our moral duty and statutory obligation to ensure access to the communications revolution²; it is the public interest.

The Notice, nonetheless, seeks comment on elimination of the analog service requirement. While it notes that the Commission is “reluctant to eliminate this requirement if doing so will significantly impair the access of these users to wireless telecommunications services,”³ I would have preferred a tentative conclusion that this agency will not consider eliminating the requirement until TTY- and hearing aid-compatible digital equipment is available to the public. The Commission seeks comment on the rule, however, and so I encourage the disability community to participate in this rulemaking and educate us about their experiences – and frustrations – with wireless services. In addition, I hope we will learn the views of the analog customer base more broadly, particularly those rural customers whose ability to roam could be affected by elimination of the rule.

On a separate note, this item seeks comment on eliminating the requirement that cellular licensees “inform prospective subscribers of the area in which reliable service can be expected.”⁴ The item observes that PCS providers and other CMRS operators are not subject to this rule, and “these other providers typically give customers service-area-related information.”⁵ At this time, I question whether meaningful competition makes a rule ensuring the provision of accurate service area information “no longer necessary in the public interest.”⁶ Indeed, a competitive marketplace could prompt some providers to take liberties in their marketing practices.⁷ I look forward to reviewing the record on this matter.

I nonetheless support adoption of this Notice as we examine our rules pursuant to the Section 11 biennial review process. I hope that the questions posed here will prompt people with disabilities and other consumers to participate actively in this proceeding.

² Section 255 of the Communications Act requires that “a provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.” 47 U.S.C. § 255(c). In Section 1 of the Act, moreover, the Congress charged the Commission with the responsibility “to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service.” 47 U.S.C. § 151.

³ Notice at ¶ 31.

⁴ *Id.* at n.16 (quoting 47 C.F.R. § 22.901(a)).

⁵ *See id.* at ¶ 14.

⁶ 47 U.S.C. § 161(b).

⁷ The Commission currently has before it a complaint that a PCS provider has engaged in a print advertising campaign that includes misleading home coverage area information. *See* Letter from Andrea C. Levine, Vice President, National Advertising Division, Council of Better Business Bureaus, Inc. to David Solomon, Chief, Enforcement Bureau, FCC (April 12, 2001). While I take no position as to the underlying merits of that complaint, I note that many consumers view quality of service and extent of network coverage, along with price, as the critical factors in choosing a CMRS provider.