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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Establishment of Rules Governing Procedures to Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission	)	CI Docket No. 02-32
	)	
Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers	)	CC Docket No. 94-93
	)	
2000 Biennial Regulatory Review	)	CC Docket No. 00-175

MEMORANDUM OPINION AND ORDER

AND

NOTICE OF PROPOSED RULE MAKING

Adopted: February 14, 2002 **Released: February 28, 2002**

Comment Date: 30 days after Federal Register Publication
Reply Comment Date: 45 days after Federal Register Publication

By the Commission: Commissioners Abernathy, Copps, and Martin issuing separate statements.

I. INTRODUCTION

1. We initiate this proceeding to seek comment on proposals to establish a unified, streamlined process for the intake and resolution of informal complaints filed by consumers in order to promote maximum compliance with the requirements of the Communications Act of 1934, as amended, (the Act) and our implementing rules and orders.[1] The Commission has previously emphasized that our consumer complaint mechanisms are a principal vehicle for achieving such compliance and promoting the pro-competitive goals underlying the Act and our rules.[2] We are concerned, however, that our existing complaint mechanisms require consumers to navigate an array of rule provisions and disparate procedures administered by various offices within the Commission in order to file complaints about practices they believe violate the Act or our rules and orders. Our goal in this proceeding is to consolidate and streamline our consumer complaint mechanisms for consumers to use when submitting informal

[1] The Communications Act of 1934, as amended, 47 U.S.C. §208. Throughout this order, we will refer to all complaints filed outside of the *formal* Section 208 common carrier complaint process as *informal* complaints.

[2] *See generally* Amendment of Rules to Be Followed When Formal Complaints Are Filed Against Common Carriers, *First Report and Order in CC Docket No. 96-238,* 12 FCC Rcd. 22497 (1977); *see also* In the Matter of Implementation of Sections 255 and 251(A)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996, *Report and Order and Further Notice of Inquiry in WT Docket No. 96-198* (1999), 17 Communications Reg. (P&F) 837, at ¶ 109.

complaints to the Commission.[3]

2. We propose to establish a consumer complaint mechanism patterned after our existing rules for informal complaints filed against common carriers pursuant to Section 208 of the Act contained in Sections 1.717-1.718 of the Commission's rules.[4] We also invite comment on whether we should make changes to our existing informal common carrier complaint rules. The Section 208 informal complaint rules emphasize ease of filing by consumers and voluntary cooperative efforts by consumers and affected companies to resolve their differences informally. Consumers and carriers have benefited substantially from these rules over the years. Indeed, the vast majority of consumer complaints filed pursuant to our Section 208 informal complaint rules are resolved by the carriers in a manner satisfactory to the complaining consumers with little direct involvement by Commission staff.[5] The Section 208 informal complaint process has been a valuable tool in our enforcement arsenal in another important respect. We rely on Section 208 informal complaints to help keep us apprised of possible violations of our rules and orders and of other practices that may warrant Commission intervention to protect consumers. In the past year, we have taken enforcement actions – including Notices of Apparent Liability and forfeitures--totaling over $4.6 million against various common carriers for consumer-related violations of the Act or Commission rules and orders. Many of these forfeiture actions were based on the staff's review of Section 208 informal complaints filed by or on behalf of consumers.[6]

II. NOTICE OF PROPOSED RULEMAKING IN CI DOCKET 02 – 32

A. Background

3. In our *2000 Biennial Regulatory Review,*[7] we accepted staff's recommendation that several additional changes to the rules regarding Section 208 informal complaints be made in order to better serve consumers. Consistent with our recommendations in the *2000 Biennial Regulatory Review*, we now propose, on our own motion, to establish a uniform, streamlined consumer complaint process that will be applicable to all services regulated by the Commission that are not currently covered by the common carrier informal complaint rules.[8] These would include, for example, consumer complaints filed against broadcast station licensees, cable franchise operators, MMDS providers, unlicensed service providers, and any other entity subject to regulation by the Commission.[9] We also propose changes to the

[3] *See* 47 C.F.R. § 0.141(a)(1).

[4] *See* 47 C.F.R. §§ 1.716- 1.718.

[5] We consider a complaint to be resolved in a satisfactory manner when the carrier in question has responded to the complaint by issuing a credit or refund to the consumer, and the consumer has not indicated to the Commission that he or she is unhappy with the resolution. In a random sampling of common carrier complaints and responses received by CIB between October and December 2001, we determined that 79% of the complaints were resolved in a satisfactory manner.

[6] In 1994, the Commission released a Notice of Proposed Rulemaking (*1994 NPRM*) in CC Docket No. 94-93, in which it proposed a number of changes to the existing Section 208 informal complaint rules. *Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to be Followed when Informal Complaints are Filed Against Common Carriers*, CC Docket No. 94-93, *Notice of Proposed Rulemaking,* 9 FCC Rcd 4499 (1994). Since that time, significant changes in the telecommunications marketplace have come about. Because of these changes, we believe it is necessary to refresh the record on Section 208 informal complaints. Therefore, we will incorporate comments filed in that proceeding into this proceeding, and terminate the 1994 proceeding.

[7] *2000 Biennial Regulatory Review*, CC Docket 00-175, 16 FCC Rcd 1207 (2001), at ¶¶ 78- 80.

[8] *See* 47 C.F.R. §§ 1.716- 1.718.

[9] Our statistics reveal that complaints against non-common carriers represent a small percentage of the total number of complaints received by CIB. Between October and December 2001, non-common carrier complaints accounted for less that 10% of the total number of complaints received by CIB. *See FCC Consumer Information*

(continued....)

common carrier informal complaint process, including specifying the type of documentation that should accompany informal complaints as well as prescribing a specific time frame within which a carrier must respond to such a complaint.[10]

B. DISCUSSION

1. Scope of the Consumer Complaint Process

4. In this Notice of Proposed Rulemaking (NPRM), we seek comment on our proposal to create a consumer complaint process patterned after our Section 208 informal complaint rules and to extend this process to all entities regulated by the Commission. Currently, the informal complaint rules apply only to complaints against common carriers.[11] The *September Biennial Review Staff Report* pointed out that informal complaints against regulated entities other than common carriers have been handled in a less structured manner, which has resulted in a lack of predictability for consumers in filing complaints and for industry in receiving complaints.[12] Our goal is, to the maximum extent possible, to establish a consistent procedure for the handling of all informal consumer complaints. Nevertheless, in order to avoid disruption, we do not propose to limit or otherwise alter any remedies and procedural options in areas in which the Commission has already established specific informal complaint procedures.[13] Those informal consumer complaints concerning issues for which there is no established resolution procedure and which are not subject to the jurisdiction of another governmental entity would be included under the informal consumer complaint rules proposed in this NPRM.[14] Accordingly, we propose to provide that consumers generally should file informal complaints with the Consumer Information Bureau (CIB). While, as noted below, the Enforcement Bureau (EB) will not adjudicate informal consumer complaints, it will adjudicate formal consumer complaints and will have the authority to investigate, on its own motion, potential violations evidenced through the filing of informal complaints. If a given complaint is subject to an existing complaint procedure, CIB would facilitate the processing of such complaints by, for example, ensuring that the appropriate Bureau receives the complaint for resolution. If there is no established resolution procedure for the specific complaint, it would be processed under the procedure proposed in this notice. We invite comment on this proposal.

5. The Commission has the authority to establish a uniform consumer complaint process applicable to all regulated entities. Specifically, Sections 1 and 2 of the Act grant the Commission authority to regulate interstate and foreign commerce in communication by both wire and radio.[15] Section

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(...continued from previous page)
Bureau Releases Quarterly Report on Complaints and Inquiries Processed, Press Release, released February 7, 2002.

[10] *See 2000 Biennial Regulatory Review* at ¶¶ 78 – 80.

[11] 47 U.S.C. § 208. A "common carrier" is "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy...." *See* section 3 of the Act, 47 U.S.C. § 153.

[12] Federal Communications Commission, *Biennial Review 2000, Staff Report*, CC Docket 00-175, September 19, 2000 (*September Biennial Review Staff Report)* at ¶ 162.

[13] *See, e.g.*, 47 C.F.R. § 1.719 (informal complaints filed pursuant to Section 258 of the Act -- unauthorized change to a subscriber's preferred carrier).

[14] For example, we propose to apply these new rules to informal complaints from consumers concerning a video programming distributor's purported failure to fulfill the mandates set forth in our closed captioning rules. 47 C.F.R. Sec. 79.1. However, those rules do not contain informal complaint procedures, and in the interest of ensuring that consumers have an easy-to-use process for filing closed captioning complaints, we propose to make the simplified complaint procedures described in this NPRM applicable to all such complaints.

[15] *See* 47 U.S.C. §§ 151 and 152, respectively.

4(i) gives the Commission authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions," and Section 4(j) provides that the Commission may "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."[16] Section 303(r) gives the Commission the authority to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with the law, as may be necessary to carry out the provisions of this Act...."[17] Finally, Section 403 authorizes the Commission to "institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any provision of this Act, or relating to the enforcement of any of the provisions of this Act."[18] We tentatively conclude that it is in the public interest to provide consumers with an initial single point of contact to deal with their complaints concerning all of the entities regulated by the Commission, and not only common carriers.

6. Currently, CIB processes informal consumer complaints filed against common carriers. However, in many cases, other bureaus have responsibility for processing and resolving informal non-common carrier consumer complaints.[19] For example, EB resolves informal consumer complaints against broadcast station licensees alleging violations of the Commission's broadcast obscenity/indecency rules and other rule violations. These complaints typically have been submitted in letter form or by e-mail. Under the current approach, EB reviews each complaint it receives and, where the complaint provides information suggesting that a violation may have occurred, it may commence an investigation. Where the investigation reveals that the broadcast licensee has violated a provision of the Communications Act or the Commission's rules, EB may take or recommend enforcement action such as an admonishment, a monetary forfeiture or commencement of a revocation proceeding. Under our proposed new approach, informal complaints would be processed by CIB, or another bureau where appropriate, through the non-adjudicatory process set forth in our informal common carrier complaint rules. EB, or other bureaus in those instances where enforcement responsibility lies in such bureaus, would adjudicate "formal" consumer complaints and could, on its own motion, commence an investigation where informal consumer complaints suggest a pattern of violations of the Act or the Commission's rules by a particular licensee, or serious violations that justify enforcement action even in the absence of a pattern. We seek comment on this approach.

7. Commenters are also requested to describe differences in the characteristics of the various communications-related services regulated by the Commission, and whether such differences warrant different informal complaint procedures administered by the Commission. For example, we recognize that, in the common carrier context, consumers and carriers often have a direct contractual relationship. No such relationship exists, for example, between broadcast licensees and consumers. Moreover, whereas consumers who file complaints against common carriers often seek monetary relief such as a refund or credit, consumers who file complaints against broadcast licensees typically have asked the Commission to exercise its discretion to take enforcement action such as a forfeiture or revocation of license. Nevertheless, even in these cases, voluntary action by the broadcaster, *e.g.*, a public apology for its airing of objectionable material, might resolve the complaint. We seek comment on whether these differences warrant excluding certain classes of complaints from the uniform procedures proposed here.

8. We also seek comment on the extent to which our streamlining proposals, if adopted,

[16] *See* 47 U.S.C. §§ 154 (i) and (j), respectively.

[17] 47 U.S.C. § 303(r).

[18] 47 U.S.C. § 403.

[19] The Cable Services Bureau, for example, processes many of the consumer complaints concerning cable operators.

would impose an unnecessary burden on small regulated entities, as defined by the Regulatory Flexibility Act.[20] For example, we ask whether the time to reply to complaints should be extended in the case of small entities, to avoid taxing their limited resources in time and money. Commenters are requested to make specific suggestions about how the proposals described in the paragraphs that follow might be adjusted in the case of small regulated entities.

2. Initial Contact with the Service Provider

9. As noted above, we envision an informal complaint process that promotes cooperative efforts by consumers and industry to quickly resolve disputes without resort to formal pleadings and adjudications. Where appropriate, we encourage consumers to express informally their concerns or grievances about regulated products and services directly to the product or service provider before filing a complaint with the Commission. We recognize, however, that this informal approach may be more appropriate in the sort of relationships described in paragraph 7 above, between a common carrier or a cable system operator and a consumer, rather than, for example, some complaints between a broadcast licensee and a consumer. We expect that many disputes will be satisfactorily resolved though such communications without the need to file complaints. We do not propose, however, that consumers be required to engage in such communications as a prerequisite to filing an informal or formal consumer complaint with the Commission. We believe that access to a consumer-friendly informal complaint process will ensure that consumers have an absolute right to have their grievances promptly addressed by the company involved with reasonable expectation that the regulated company will respond in the manner and within the time period prescribed by the Commission. We especially invite interested parties to comment on what if any measures are needed to ensure that consumers reasonably have the ability to contact companies directly with their grievances. We note, for example, that our Section 255 accessibility complaint rules require covered manufacturers and service providers to maintain a point of contact for receiving complaints and inquiries about their products and services from consumers and to file that point of contact information with the Commission.[21] We seek comment on whether the Commission should have a similar requirement for other regulated entities, or whether there are other alternatives for assisting consumers who wish to contact a company directly with a complaint?

3. Service of Informal Consumer Complaints

10. Under our common carrier complaint rules, in accordance with Section 208 of the Act, informal complaints are filed directly with the Commission, which then serves on the carrier a "Notice of Complaint" that includes a copy of the complaint and instructions to respond to the complaint within a specified time.[22] We propose to adopt a rule directing Commission staff to forward informal consumer complaints that raise issues within the Commission's jurisdiction and that meet the form and content requirements discussed below to the regulated entity or entities involved in the same manner as is done under our common carrier complaint rules, unless there is a more effective means to resolve the complaint.[23] For example, in some cases informal consumer complaints may be resolved more quickly if the regulated entity that is the subject of the complaint is contacted by telephone or e-mail. Interested parties are invited to address the feasibility of this approach with respect to non-common carriers and whether different rules or procedures should apply.

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[20] *See* 5 U.S.C. § 603.

[21] *See* 47 C.F.R. § 6.18.

[22] *See* 47 C.F.R. § 1.717.

[23] *See* 47 C.F.R. § 1.716.

4. Form and Content of Informal Consumer Complaints

11. We propose to encourage informal consumer complaints to be transmitted to the Commission by any reasonable means, including transmission by letter, facsimile transmission, telephone (voice and TTY), Internet e-mail, and audio or video-cassette recording. Our objective is to make it easy for consumers to file complaints and for companies that are the subjects of complaints to move promptly to satisfy any meritorious complaints. Therefore, we propose that any consumer complaint filed with the Commission should include: (1) the name and address of the complainant; (2) the name and address of the company against whom the complaint is being made, and in the case of a broadcast station, the station call sign or network affiliation; (3) details about the product or service about which the complaint is being made; (4) a statement of facts supporting the complainant's allegation that the regulated company has acted or failed to act as required by the Act or the Commission's rules or orders; (5) if applicable, a copy of the complainant's bill or other correspondence from the regulated entity that gives rise to the dispute; and (6) the specific action by the regulated entity that is being sought by the complainant. We invite comment on this proposal. We also seek comment on whether the Commission should make it a priority to facilitate the filing of online complaints. What types of measures should the Commission take in this regard?

12. Although these parameters will necessitate some diligence on the part of consumers in preparing and submitting complaints, we believe that any such burdens are far outweighed by the benefits of prompt and decisive action by the company involved or Commission staff. In order to ensure that all consumer complaints are addressed, Commission staff will be available to assist consumers in the filing of informal complaints. This may entail staff assisting the consumer in obtaining the necessary information. We seek comment on the burden imposed by this complaint process, specifically as to whether there are scenarios in which the proposed "informal" process would make it more, not less, difficult for consumers to obtain redress for their complaints? We seek comments and proposals as to how to make this process more consumer friendly, and to limit the burden placed on complaining consumers. The level and nature of the information required is likely to vary widely depending upon the specific allegations raised, and we believe that it is impractical to fashion a rule to anticipate these varying circumstances. We request comment on the kinds of information and documentation that should be required in informal consumer complaints and on what, if any, additional information should be included in informal consumer complaints against broadcast station licensees and other non-common carrier entities. We also request comment on whether we should make changes to our informal common carrier complaint rules with regard to the types of information and documentation that should be required pursuant to Section 1.716 of our rules.[24]

5. Responses to Informal Consumer Complaints

13. As stated above, we envision an informal consumer complaint process that emphasizes informal, cooperative efforts between consumers and companies to resolve disputes without extensive involvement by Commission staff. We also wish to avoid imposing cumbersome filing and reporting requirements that might deprive consumers and companies of non-adversarial opportunities to resolve their disputes. Just as it is important for consumers to have a simple, easy-to-understand process for raising their concerns with the Commission, it is equally important that companies be able to respond quickly and effectively to those concerns. As with the common carrier complaint rules, a non-common carrier will be required to send a copy of its response to the complainant.[25] It is not feasible to speculate about specific types of information that may be required by Commission staff in response to a complaint. Thus, we do not contemplate the imposition of any undue burdens on non-common carriers that have

[24] *See* 47 C.F.R. § 1.716.

[25] See 47 C.F.R. § 1.717.

procedures in place for the quick and effective resolution of consumer complaints.

14. We seek comment, however, on whether we should set a specific time frame within which a company must respond to notification of an informal consumer complaint.[26] We anticipate that there would be a benefit to consumers in requiring carriers to respond within a predictable, uniform time frame, but we are concerned that setting such a time frame might do away with the flexibility necessary to respond to complaints of varying complexity. We ask commenters to comment on the appropriateness of a fixed 30-day, or other fixed number of days, response period for informal consumer complaints. We also ask commenters to comment on the appropriateness of a fixed 30-day, or other fixed number of days, response period for informal complaints filed against common carriers pursuant to Section 1.717 of our rules.[27]

6. Review and Disposition of Informal Consumer Complaints

15. We anticipate that many informal consumer complaints will be resolved by the informal process, as is the case under our current common carrier complaint rules. We also recognize that not all informal consumer complaints will be resolved by the company involved to the satisfaction of the consumer.

16. Under our Section 208 informal complaint rules for common carriers, Commission staff reviews the complaint and the carrier's response to determine what, if any, additional action is warranted.[28] If the complainant is not satisfied by the carrier's response and the Commission's disposition, he or she may file a formal complaint with the Commission within six months of the carrier's response.[29] If the complainant does not file a timely formal complaint, he or she is deemed to have abandoned the unsatisfied informal complaint.

17. We propose a similar approach for informal consumer complaints involving non-common carriers. Specifically, under our proposal, Commission staff would review the informal complaint and company's response. If deemed necessary, staff would contact the complainant regarding the staff's review and the company's response.[30] If the consumer is not satisfied with the company's response, staff will advise the consumer that it may file a formal complaint within six months of the company's response. Currently, the rules contain no procedures for filing a "formal" complaint in the non-common carrier context. We propose to establish a formal complaint process that is similar to that which applies to common carriers.[31] Under this approach, consumers filing formal complaints against broadcast licensees or other non-common carriers would need to comply with pleading and filing requirements similar to those that apply to formal complaints filed against common carriers. Such complaints would be handled by EB or other relevant bureaus with jurisdiction over such matters. We seek comment on this approach.

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[26] Commission staff recommended that this issue, regarding our common carrier informal complaint process, be reviewed in the *September Biennial Review Staff Report*. This recommendation was accepted by the Commission in the *2000 Biennial Regulatory Review*. *See September Biennial Regulatory Review Staff Report* at ¶ 162; *2000 Biennial Regulatory Review* at ¶ 79.

[27] *See* 47 C.F.R. § 1.717.

[28] Under the informal common carrier complaint rules, "[w]here there are clear indications from the carrier's [response] or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant." 47 C.F.R. §1.717.

[29] *See* 47 C.F.R. §1.718.

[30] *See* 47 C.F.R. §1.717.

[31] *See* 47 C.F.R. §§ 1.720-1.736.

In particular, we seek comment on what, if any, additional or different pleading or filing requirements should apply to formal consumer complaints against the various types of non-common carriers.

18. As noted above, our experience has been that in many cases, consumers filing complaints against non-common carriers are, in fact, asking the Commission to investigate and take enforcement action. This is particularly true in the broadcast context, where the Act does not authorize the Commission to award damages to the complainant. We note, however, that the Commission has declined to assess forfeitures in formal complaint proceedings, but rather has initiated separate forfeiture proceedings where it believed that a common carrier's violation warranted assessment of a forfeiture.[32] Such enforcement proceedings involve discretionary action by the Commission where the subject is a party, but not the complainant. We propose to follow this approach in the non-common carrier context as well. We believe this approach takes into account that the complaint process and the forfeiture process are two distinct processes, each subject to different types of judicial scrutiny. In addition, the Enforcement Bureau may initiate investigations, on its own motion, and take or recommend enforcement actions where, for example, informal consumer complaints received show a possible pattern of rule violations by a particular non-common carrier or an egregious individual violation against a consumer.

19. We also seek comment on whether to handle informal consumer complaints concerning interference to home electronic equipment using this proposed process. We propose not to forward informal consumer complaints involving such interference to the companies because our experience has shown that interference to home electronic equipment can occur from either a legal or illegal operation, and the mere fact that a consumer may be experiencing interference, in and of itself, is not sufficient to allege a violation of our rules. Where, however, a consumer does provide sufficient information that the interference is the result of a violation, Commission staff will process the complaint under the informal complaint process. As in other areas, if a complainant is not satisfied, it may file a formal complaint with EB. And, of course, EB would initiate independent enforcement action where appropriate. We seek comment on these proposals.

20. We invite comment on whether we should establish any time limit for the filing of an informal complaint under the proposed rules. We note that Section 415(b) of the Act limits the filing of certain claims against common carriers for money damages to "within two years from the time the cause of action accrues, and not after...."[33] We recognize that the affected entities need to be protected from being exposed indefinitely to stale complaints. On the other hand, we recognize that consumers should have maximum flexibility in electing to pursue informal complaints, especially in the case of repeated infractions on the part of an entity. We seek comment on this issue, on the relationship of Section 415 to our informal complaint authority under the proposed rules, and on the need for regulatory parity in this respect as among the various entities regulated by the Commission.

21. We also seek comment on how the Commission can best address the issues raised above to better serve consumers. We ask the parties to comment on how the Commission can better coordinate its complaint process with the processes used by state and local governments. What efforts can be made to share information gained by this coordination? What other procedural assistance should the Commission offer to consumers, as well as state and local governments?

7. Time Period for Relating Back of Formal Complaints

22. We also seek comment on a specific proposal contained in the *1994 NPRM* relating to a complainant's right to file a formal section 208 complaint based on an unsatisfied informal section 208 complaint. Section 1.718 of the common carrier complaint rules provides that a complainant that is not

[32] *See, e.g., TSR Wireless LLC v. US West Communications, Inc.*, 15 FCC Rcd 11,166 (2000).

[33] *See* 47 U.S.C. § 415 (b).

satisfied with a carrier's resolution of an informal section 208 complaint must file a formal complaint within six months of the carrier's report in order to continue prosecution of the complaint and to continue to use the filing date of the informal complaint for statute of limitation purposes.[34] The filing of an informal complaint is in no way a prerequisite to filing a formal complaint. In addition, the institution of the proposed informal complaint process does not supplant the formal complaint process. In the *1994 NPRM*, the Commission proposed to revise Section 1.718 to provide that in all cases involving an unsatisfied informal Section 208 complaint, the period of time allowed for filing a formal complaint that will relate back to the filing date of the informal complaint is sixty days after the staff has informed the parties in writing of its disposition of the informal complaint.[35] The Commission noted in the *1994 NPRM* that consumers should benefit from the proposed rule change because it provides certainty and clarity regarding the period of time in which a formal complaint based on an unsatisfied informal complaint must be filed.[36] The Commission also noted that carriers would similarly benefit from the certainty and clarity of the proposed rule change because they will better able to determine the length of time they would be required to retain records relating to the subject matter of an informal complaint.[37]

23. The Commission received very few comments in response to this and other proposals set forth in the *1994 NPRM*.[38] Nevertheless, due to the importance of this issue, we again invite interested parties to comment on whether the proposed revision to Section 1.718 would better serve the needs of consumers and carriers by providing greater predictability and certainty about the complaint process. In addition, a practical effect of the proposed rule change would be to expand the time in which to file a formal complaint based on an unsatisfied informal complaint in complex informal complaint proceedings because the deadline for filing such complaints occurs later in time under the proposed rule than under the current rule. Interested parties are asked to comment on whether the proposed rule would pose any hardship or disadvantage for either complainants or defendant carriers.

8. Confidential Treatment of Filings

24. We propose to amend the pertinent provisions in the current rules that designate informal complaints as records that are routinely available for public inspection. Because informal complaint records include personal information relating to consumers such as their names, addresses, and phone numbers, we propose to no longer make them routinely available for public inspection. Such personal information is subject to protection from disclosure under the Privacy Act and is not generally available to the public.[39] To comply with the requirements of the Privacy Act, informal complaint records that are subject to disclosure pursuant to requests for information under the Freedom of Information Act,[40] and other requests for such information will be sanitized to remove all personal, identifying information

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[34] 47 C.F.R. § 1.718. This section was intended to prevent expiration of the two-year limitation period on claims for damages during the pendency of the informal complaint process. Section 1.718, literally read, provides that informal complaints are deemed to be abandoned, or a complainant's right to file a formal complaint is extinguished, if the formal complaint is not filed within six months after the carrier has filed its report in the informal complaint proceeding. In many instances, the rule has required complainants to file formal complaints to preserve their causes of action even when the staff's processing of the informal complaints is still in progress.

[35] *In re Amendment of Rules to be Followed When Informal Complaints are Filed Against Common Carriers*, CC Docket 94-93, *Notice of Proposed Rulemaking*, 9 FCC Rcd 4499, ¶ 10 (1994).

[36] *Id.*

[37] *Id.*

[38] A total of three comments and one reply comment was filed in response to the *1994 NPRM*.

[39] *See* Privacy Act, 5 U.S.C. § 552a. *See also* Privacy Act System of Records, 66 FR 51955 (Oct.11, 2001) (FCC/CIB-1, Informal Complaints and Inquiries).

[40] *See* 5 U.S.C. 552(b)(6).

relating to the complainants prior to the records being disclosed.[41] Such personal information is not generally available to the public. We anticipate that the implementation of this proposal will be in the interests of the consumers and in keeping with the letter and intent of the Privacy Act. Moreover, we must ensure that our rules facilitate the submission of relevant information by consumers and defendant companies without fear of dissemination of information that is confidential or proprietary. We encourage interested parties to address whether our existing rules governing the disclosure of confidential or proprietary materials are adequate to protect the interests of consumers and regulated companies or whether additional or different safeguards are needed. If a formal complaint process is established for non-common carrier complaints as discussed in paragraph 7 above, however, or if EB or another relevant bureau independently begins an investigation or enforcement proceeding, the informal complaints triggering the formal complaint or investigation would be made routinely available to the public unless confidential treatment was specifically requested at the time of filing.[42] The Commission's Privacy Act System of Records lists such disclosure.[43] Conceivably, however, consumers who file underlying informal complaints that are the subject of the investigation or enforcement proceeding may request confidentiality. Personal information on such consumers will be subject to protection under the Privacy Act and will not be disclosed.

9. *Ex Parte* Treatment of Consumer Complaints

25. We propose that informal complaints filed pursuant to these new rules shall be deemed "exempt" proceedings, as is the case with informal complaints filed pursuant to our common carrier complaint rules under Section 208 of the Act. This exempt designation will allow the Commission and its staff to meet or otherwise communicate with either the complaining consumer or the regulated entity, as well as with third parties, on an *ex parte* basis to discuss matters pertaining to the complaint and related compliance issues. This exempt classification has proven to be highly beneficial to consumers, regulated common carriers and the Commission in terms of facilitating the identification and exchange of information and ideas needed to resolve Section 208 informal complaints and related compliance issues. We seek comment on whether this is the appropriate classification of informal complaints, and on the potential effect of this classification on complainants and defendant companies. On the other hand, if a formal complaint process is established as discussed in paragraph 7 above, then these complaint proceedings will be treated as restricted for the purposes of the *ex parte* rules.

III. MEMORANDUM OPINION AND ORDER IN CC DOCKET 94-93

26. Since the Commission released the *1994 NPRM* in CC Docket 94-93, significant changes in the telecommunications marketplace have come about, mainly in response to the passage of the Telecommunications Act of 1996 (1996 Act). Competition and technology convergence have resulted in more opportunities for consumers but also more areas of confusion and concern. Since enactment of the 1996 Act, the Commission has received tens of thousands of complaints from consumers alleging violations of the Act and our rules and orders. Based on the staff's handling of these complaints, it is clear that there are many communications-related services being offered today that are not covered by consumer-friendly informal complaint rules such as those applicable to common carriers in Sections 1.716-1.718 of our rules.

27. The combination of the 1996 Act and the *2000 Biennial Regulatory Review* significantly

[41] *See* FCC/CIB-1, 66 FR at 51956 (informal complaints are publicly available except for personal information).

[42] *See* § 0.453(a)(2)(ii)(E) of the Commission's rules, 47 C.F.R. § 0.453(a)(2)(ii)(E).

[43] *See* FCC/CIB-1, 66 FR at 51956 (listing routine uses permitting release of information in informal complaints in enumerated circumstances.)

changes the focus of the *1994 NPRM*. Therefore, we will close and terminate CC Docket No. 94-93 and incorporate any comments filed into that docket in the instant proceeding. Filings made in CC Docket No. 94-93 need not be resubmitted, though commenters may wish to re-file and address additional issues, which will be considered in the new docket.

IV. PROCEDURAL MATTERS

Ex Parte Rules—Non-restricted Proceeding

28. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206 (a).

Regulatory Flexibility Act

29. As required by the Regulatory Flexibility Act,[44] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.[45]

Paperwork Reduction Act

30. The requirement for collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 USC 3504 (H)). Persons wishing to comment on this collection of information should direct their comments to Judy Boley, Office of the Managing Director, Federal Communications Commission, The Portals, Room 1C-804, 445 12th Street SW, Washington, DC 20554, tel. 202-418-0214, e-mail jboley@fcc.gov.

Comment and Reply Dates

31. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[46] interested parties may file comments within 30 days after publication of this NPRM in the Federal Register and may file reply comments within 45 days after publication of this NPRM in the Federal Register. All filings should refer to CI Docket No. 02-32. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[47] Comments filed through ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket numbers, which in this instance is CI Docket No. 02-32. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form<your e-mail address>." A sample form and

[44] *See* 5 U.S.C. § 603.

[45] *See* 5 U.S.C. § 603(a).

[46] 47 C.F.R. §§ 1.415, 1.419.

[47] *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

directions will be sent in reply.

32. Parties that choose to file by paper must file an original and four copies of each, and are hereby notified that effective December 18, 2001, the Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

33. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. In addition, this is a reminder that, effective October 18, 2001, the Commission discontinued receiving hand-delivered or messenger-delivered filings for the Secretary at its headquarters location at 445 12th Street, SW, Washington, DC 20554.

34. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8:00 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method . . .	It should be addressed for delivery to . . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 to 7:00 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12th Street, SW Washington, DC 20554

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Renee Owusu, Consumer Information Bureau, Federal Communications Commission, at the filing window at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, CI Docket No. 02-32), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy -- Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554.

35. Regardless of whether parties choose to file electronically or by paper, parties should also file

one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554 (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at qualexint@aol.com.

36. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules.[48] We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage that parties track the organization set forth in the NPRM in order to facilitate our internal review process.

VI. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 208, 303 (r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154 (j), 208, 303(r), and 403, the NOTICE OF PROPOSED RULEMAKING IS ADOPTED. Comments regarding the NOTICE OF PROPOSED RULEMAKING ARE REQUESTED as described above.

38. IT IS FURTHER ORDERED that the proceedings in CC Docket 94-93 ARE TERMINATED, and the docket is closed.

39. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

40. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. The NPRM and the proposed rules can also be downloaded in Wordperfect 5.1 and in ASCII formats from http://www.fcc.gov/dtf.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[48] *See* 47 C.F.R. § 1.48.

Appendix A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[49] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 31 of the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[50] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[51]

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

Since the passing of the Telecommunications Act of 1996, the convergence of competition and technology has resulted in more opportunities for consumers, but also more areas of confusion and concern. We initiate this proceeding to seek comment on proposals to establish a unified, streamlined process for the intake and resolution of complaints filed by consumers. We expect such a process to promote maximum compliance with both the requirements of the Communications Act of 1934, as amended (the Act), and the Commission's implementing rules and orders.

The Commission has previously emphasized that our consumer complaint mechanisms are a principal vehicle for achieving compliance and promoting competition. We are concerned, however, that our existing complaint measures require consumers to navigate an array of rule provisions and disparate procedures in order to file complaints. Because the Commission relies on the informal complaint process to protect consumers, including small businesses, the process must expand in order to be accessible and efficient. We propose to establish an informal consumer complaint mechanism that emphasizes ease of filing by consumers and voluntary cooperative efforts by consumers and affected companies to resolve their differences. Our intention is to create a process that is both simple and effective.

B. Legal Basis

The Commission has authority to process informal complaints filed against common carriers pursuant to Section 208 of the Act[52] and Sections 1.716 through 1.718 of the Commission's rules.[53] Further, the Commission has the authority to extend the informal complaint process to other entities regulated by the Commission under Sections 1, 2, and 4(i) and (j) of the Act.[54]

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[49] *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).

[50] *See* 5 U.S.C. § 603(a).

[51] *See* 5 U.S.C. § 603(a).

[52] *See* 47 U.S.C. § 208.

[53] *See* 47 CFR §§ 1.716 – 1.718.

[54] *See* 47 U.S.C. §§ 1, 2, 4(i) and (j).

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

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[55] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[56] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[57] 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 Small Business Administration (SBA).[58]

General

A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[59] Nationwide, as of 1992, there were approximately 275,801 small organizations.[60] "Small governmental jurisdiction"[61] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[62] As of 1992, there were approximately 85,006 governmental entities in the United States.[63] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.[64] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these proposed rules.

Cable Services or Systems

The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[65] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services.

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[55] *See* 5 U.S.C. § 603(b)(3).

[56] *See* 5 U.S.C. § 601(6).

[57] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[58] *See* 15 U.S.C. § 632.

[59] *See* 5 U.S.C. § 601(4).

[60] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration (SBA)).

[61] *See* 47 CFR § 1.1162.

[62] *See* 5 U.S.C. § 601(5).

[63] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[64] *Id.*

[65] *See* 13 CFR § 121.201, North American Industry Classification System (NAICS) codes 51321 and 51322.

According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[66]

The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[67] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[68] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

The Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[69] The Commission has determined that there are 67,700,000 subscribers in the United States.[70] Therefore, we estimate that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[71] Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals 1,450.[72] We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[73] and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Other Pay Services. Other pay television services are also classified under the North American Industry Classification System (NAICS) codes 51321 and 51322, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[74] multipoint distribution systems (MDS),[75] satellite master antenna systems (SMATV), and subscription television services.

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[66] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 51321 and 51322 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the SBA).

[67] *See* 47 CFR § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[68] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[69] *See* 47 U.S.C. § 543(m)(2).

[70] *Annual Assessment of the Status on Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00-132, Seventh Annual Report, FCC 01-1 (released January 8, 2001), Table C-1.

[71] *Id.* 76.1403(b).

[72] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA-01-0158 (released January 24, 2001).

[73] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. *See* 47 CFR § 76.1403(d).

[74] Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

[75] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

Common Carrier Services and Related Entities

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[76] According to data in the most recent report, there are 4,822 interstate service providers.[77] These providers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

We have included small incumbent local exchange carriers (LECs)[78] 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."[79] 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.[80] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Total Number of Telephone Companies Affected. 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.[81] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[82] It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by these proposed rules.

Wireline Carriers and Service Providers. 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 in operation for at least one year at the end of 1992.[83] According to the SBA's definition, a small business telephone company other than a

[76] FCC, Common Carrier Bureau, Industry Analysis Division, *Carrier Locator: Interstate Service Providers*, Figure 1 (October 2000) (*Carrier Locator*). *See also* 47 CFR § 64.601 *et seq.*

[77] FCC, *Carrier Locator* at Figure 1.

[78] *See* 47 U.S.C. § 251(h) (defining "incumbent local exchange carrier").

[79] *See* 5 U.S.C. § 601(3).

[80] Letter *from* Jere W. Glover, Chief Counsel for Advocacy, SBA, *to* William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 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 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., 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), 61 FR 45476 (Aug. 29, 1996).

[81] U.S. 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*).

[82] *See generally* 15 U.S.C. § 632(a)(1).

[83] *1992 Census, supra*, at Firm Size 1-123.

radiotelephone (wireless) company is one employing no more than 1,500 persons.[84] All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by these proposed rules.

Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers. Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPS), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[85] The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the TRS.[86] According to our most recent data, there are 1,395 LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers.[87] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,395 small entity LECs or small incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by these proposed rules.

Small Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers 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."[88] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operations because any such dominance is not "national" in scope.[89]

International Services

The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[90] This

[84] *See* 13 CFR § 121.201, NAICS codes 51331, 51333, and 51334.

[85] *See* 13 CFR § 121.201, NAICS codes 51331, 51333, and 51334.

[86] *See* 47 CFR § 64.601 *et seq.*; *Carrier Locator* at Figure 1.

[87] *Carrier Locator* at Figure 1. The total for resellers includes both toll resellers and local resellers.

[88] *See* U.S.C. § 632.

[89] Letter *from* Jere W. Glover, Chief Counsel for Advocacy, SBA, *to* William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 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 notional basis. 13 C.F.R. §121.102(b).

[90] An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

definition provides that a small entity is one with $11.0 million or less in annual receipts.[91] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[92] The Census report does not provide more precise data.

International Broadcast Stations. Commission records show that there are 17 international high frequency broadcast station authorizations. We do not request nor do we collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition.

International Public Fixed Radio (Public and Control Stations). There is one licensee in this service subject to the payment of regulatory fees to the Commission, and the licensee does not constitute a small business under the SBA definition.

Fixed Satellite Transmit/Receive Earth Stations. There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor do we collect annual revenue information, and are unable to estimate the number of the fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor do we collect annual revenue information, and are unable to estimate the number of fixed satellite small transmit/receive earth stations that would constitute a small business under the SBA definition.

Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 492 current VSAT System authorizations. We do not request nor do we collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

Mobile Satellite Earth Stations. There are 15 licensees. We do not request nor do we collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor do we collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

Space Stations (Geostationary). There are presently 66 Geostationary Space Station authorizations. We do not request nor do we collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

Space Stations (Non-Geostationary). There are presently six Non-Geostationary Space Station authorizations, of which only three systems are operational. We do not request nor do we collect annual

[91] *See* 13 CFR § 121.201, NAICS codes 48531, 513322, 51334, and 51339.

[92] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the SBA).

revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."[93] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[94] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor do we collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Mass Media Services

Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[95] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[96] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[97] Included in this industry are commercial, religious, educational, and other television stations.[98] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[99] Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number.[100] There were 1,509 television stations operating in the nation in 1992.[101] That number has remained fairly constant as indicated by the approximately 1,663 operating television

[93] *See* 13 CFR § 121.201, NAICS codes 51321 and 51322.

[94] *See* 13 CFR § 121.201, NAICS codes 51321 and 51322.

[95] While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this NPRM we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this NPRM, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. _*See Report and Order in MM Docket No. 93-48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (Aug. 27, 1996), *citing* 5 U.S.C. § 601(3).

[96] *See* 13 CFR § 121.201, NAICS code 51312.

[97] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1*, Appendix A-9 (1995) (*1992 Census, Series UC92-S-1*).

[98] *Id.*; *see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833, now NAICS code 51312) as:

> Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[99] *1992 Census, Series UC92-S-1*, at Appendix A-9.

[100] *Id.*, formerly SIC code 7812 (Motion Picture and Video Tape Production); formerly SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[101] FCC News Release No. 31327 (January 13, 1993); *1992 Census, Series UC92-S-1*, at Appendix A-9.

broadcasting stations in the nation as of September 30, 2000.[102] For 1992,[103] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[104]

Additionally, the SBA defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[105] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[106] Included in this industry are commercial, religious, educational, and other radio stations.[107] Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included.[108] However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.[109] The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992.[110] Official Commission records indicate that at total of 11,334 individual radio stations were operating in 1992.[111] As of September 30, 2000, Commission records indicate that a total of 12,717 radio stations were operating, of which 8,032 were FM stations.[112]

The proposed rules may affect an estimated total of 1,663 television stations, approximately 1,281 of which are considered small businesses.[113] The proposed rules will also affect an estimated total of 12,717 radio stations, approximately 12,209 of which are small businesses.[114] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,366 low power television stations (LPTV).[115] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator

[102] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

[103] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." *See 1992 Census, Series UC92-S-1*, at III.

[104] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[105] *See* 13 CFR § 121.201, NAICS codes 513111 and 513112.

[106] *1992 Census, Series UC92-S-1*, at Appendix A-9.

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[111] FCC News Release, No. 31327 (Jan. 13, 1993).

[112] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

[113] We use the 77% figure of TV stations operating at less than $10 million for 1992 and apply it to the 2000 total of 1,663 TV stations to arrive at 1,281 stations categorized as small businesses.

[114] We use the 96% figure of radio station establishments with less than $5 million revenue from data presented in the year 2000 estimate (*FCC News Release*, September 30, 2000) and apply it to the 12,717 individual station count to arrive at 12,209 individual stations as small businesses.

[115] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[116]

The Commission estimates that there are approximately 2,700 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[117]

Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office.[118] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[119] The SBA has approved this definition of a small entity in the context of MDS auctions.[120] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[121] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[122] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business. There are approximately 2,000 MDS/MMDS/LMDS stations currently licensed. We conclude that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

Wireless and Commercial Mobile Services

Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[123] According to the Census

[116] *See* 13 CFR § 121.201, NAICS codes 513111 and 513112.

[117] *See* 15 U.S.C. § 632.

[118] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service, the Local Multipoint Distribution Service, and the Multichannel Multipoint Distribution Service.

[119] *See* 47 CFR § 1.2110 (a)(1).

[120] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[121] *See* 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $11 million or less). *See* 13 CFR § 121.201.

[122] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, pages 36-39.

[123] *See* 13 CFR § 121.201, NAICS code 513322.

Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.[124] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Telecommunications Reporting Worksheets* data, 806 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and specialized mobile radio telephony carriers, which are placed together in the data.[125] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 806 small wireless service providers that may be affected by these proposed rules.

220 MHz Radio Service – Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone (Wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[126] According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.[127] If this general ratio continues in 2001 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service – Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[128] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[129] The SBA has approved these definitions.[130] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[131] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were

[124] *1992 Census, Series UC92-S-1*, at Table 5, NAICS code 513322.

[125] *Trends in Telephone Service*, Table 16.3 (December 2000).

[126] *See* 13 CFR § 121.201, NAICS code 513322.

[127] U.S. Bureau of the Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size*, Table 5, Employment Size of Firms; 1992, NAICS codes 513321, 513322, and 51333.

[128] *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70, at ¶¶ 291 – 295 (1997).

[129] *Id.* at ¶ 291.

[130] *See* Letter to D. Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

[131] *See generally* Public Notice, "220 MHz Service Auction Closes," Public Notice, 14 FCC Rcd 605 (1998).

sold.[132] Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[133]

700 MHz Guard Band Licenses. In the *700 MHz Guard Band Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[134] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[135] Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[136]

Private and Common Carrier Paging. In the Paging *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[137] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions.[138] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven (57) companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, 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 therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by these proposed rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

[132] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Public Notice, 14 FCC Rcd 1085 (1999).

[133] "Phase II 220 MHz Service Spectrum Auction Closes", Public Notice, 14 FCC Rcd 11218 (1999).

[134] *See* Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 65 FR 17599 (April 4, 2000).

[135] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 Wireless Telecommunications Bureau, October 23, 1998).

[136] "700 MHz Guard Bands Auction Closes," Public Notice, DA 01-478 (rel. February 22, 2001).

[137] *220 MHz Third Report and Order*, 62 FR 16004 (April 3, 1997), at paragraphs 291-295.

[138] "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98-107 (1999) *citing* Letter from Aida Alvarez, Administrator, Small Business Administration to Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunication Bureau, December 2, 1998.

[139] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[140] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[141] The SBA has approved these regulations defining "small entity" in the context of broadband PCS auctions.[142] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[143] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. An additional classification for "very small business" was added for C Block and is defined as "an entity that together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than forty million dollars for the preceding three years."[144] The SBA approved this definition."[145] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

Narrowband PCS. To date, two auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.[146] A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not

[140] *See* 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*, FCC 96-278, WT Docket No. 96-59, paragraphs 57-60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); *see also* 47 CFR § 24.720(b).

[141] *See* 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*, FCC 96-278, WT Docket No. 96-59, paragraph 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996).

[142] *See, e.g.*, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).

[143] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

[144] *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Fourth Report and Order, 13 FCC Rcd 15743 at 15767-68, paragraphs 45-46 (1998).

[145] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, from A. Alvarez, Administrator, SBA (December 2, 1998).

[146] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92-100, Docket No. PP 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).

more than $15 million. The SBA has approved these definitions.[147] In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[148] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[149] We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.[150] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[151] We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.[152] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

Specialized Mobile Radio (SMR). Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years.[153] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.[154] Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the $15 million size standard. In an auction completed on December 5, 2000, a total

[147] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, from A. Alvarez, Administrator, SBA (December 2, 1998).

[148] The service is defined in § 22.99 of the Commission's Rules, 47 CFR § 22.99.

[149] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR §§ 22.757 and 22.759.

[150] *See* 13 CFR § 121.201, NAICS codes 513321, 513322, and 51333.

[151] The service is defined in § 22.99 of the Commission's Rules, 47 CFR § 22.99.

[152] *See* 13 CFR § 121.201, NAICS codes 513321, 513322, and 51333.

[153] *See* 47 CFR § 90.814(b)(1).

[154] *See* Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small businesses. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

These proposed rules 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 no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

The Commission is unable at this time to estimate the number of small businesses that could be impacted by the proposed rules. The Commission's 1994 Annual Report on PLMRs[155] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

Amateur Radio Service. We estimate that 8,000 applicants will apply for vanity call signs in FY 2001. These licensees are presumed to be individuals, and therefore not small entities.

Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. The applicable definition of small entity is the definition under the SBA rules for radiotelephone (wireless) communications.[156]

Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of this IRFA, we estimate that there may be at least 712,000 potential licensees that are individuals or are small entities, as the SBA defines that term.

Fixed Microwave Services. Microwave services include common carrier,[157] private-operational fixed,[158] and broadcast auxiliary radio services.[159] At present, there are approximately 22,015 common carrier

[155] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at paragraph 116.

[156] *See* 13 CFR § 121.201, NAICS codes 513321, 513322, and 51333.

[157] *See* 47 CFR § 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[158] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from (continued....)

fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies -- *i.e.*, an entity with no more than 1,500 persons.[160] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[161] There are a total of approximately 127,540 licensees within these services. Governmental entities[162] as well as private businesses comprise the licensees for these services. As indicated earlier, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[163]

Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[164] Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition.

(...continued from previous page)
common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[159] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74 *et seq*. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[160] *See* 13 CFR § 121.201, NAICS codes 513321, 513322, 51333.

[161] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR §§ 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service, which is comprised of licensees from state departments of conservation and private forest organizations, who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR §§ 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR §§ 90.33 through 90.55.

[162] *See* 47 CFR § 1.1162.

[163] *See* 5 U.S.C. § 601(5).

[164] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR §§ 95.401 through 95.428; 47 CFR §§ 95.1 through 95.181; 47 CFR §§ 95.201 through 95.225; 47 CFR §§ 95.191 through 95.194.

Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico.[165] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.[166] The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

39 GHz Service. The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[167] An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[168] The SBA has approved these regulations defining "small entity" in the context of 39 GHz auctions. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

Local Multipoint Distribution Service. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[169] An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[170] The SBA has approved these regulations defining "small entity" in the context of LMDS auctions.[171] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 small entity winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

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[165] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR §§ 22.1001 through 22.1037.

[166] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, from A. Alvarez, Administrator, SBA (December 2, 1998).

[167] *See* In the Matter of Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Band, *Report and Order*, 12 FCC Rcd 18600 (1997).

[168] *Id.*

[169] *See* Local Multipoint Distribution Service, *Second Report and Order*, 12 FCC Rcd 12545 (1997).

[170] *Id.*

[171] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

218-219 MHz Service. The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[172] In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[173] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[174] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses, which would be affected by these proposed rules.

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

With certain exceptions, the Commission's informal complaint process will apply to all Commission licensees and regulatees. The compliance requirements imposed by the proposed rules on these entities are three-fold. First, entities against which a complaint is made must acknowledge receipt of the complaint. Second, these entities are expected to resolve the consumer complaints if possible; and third, the entity must advise the Commission that resolution of such complaint has either been attempted and has been unsuccessful or has been achieved. Entities will be required to respond within a prescribed time frame. All steps of the informal complaint process are completed by non-professional staff. Therefore, we expect that the cost for addressing consumer complaints per complaint will be no greater for small entities than it will be for large ones. Failure to resolve an informal complaint may lead to the filing of a formal complaint by the consumer and possible enforcement measures exercised by the Commission.

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

The RFA requires an agency to describe any significant, specifically small business, 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.[175]

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[172] Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP WT Docket No. 93-253, *Fourth Report and Order*, 59 FR 24947 (May 13, 1994).

[173] In the Matter of Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, WT Docket No. 98-169, *Report and Order and Memorandum Opinion and Order*, 64 FR 59656 (November 3, 1999).

[174] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (1999).

[175] *See* 5 U.S.C. § 603(c).

As described in the NPRM, we are attempting to streamline our complaint procedures to make the same requirements applicable to all licensees and regulatees. One of the alternatives we are considering is in keeping with alternative (1) above and is the establishment of a different time for responses to complaints involving small businesses. As set forth in paragraph 8 of the primary item, we are seeking comments on this alternative, including the issue of whether a different standard should be applied to different industries. Our expectation is that the establishment of an informal complaint process will reduce costs overall for small entities, by minimizing the need for extensive legal or accounting services that might be necessary in a formal complaint process.

In addition, this item contemplates that small entities may choose to avail themselves of the informal complaint process when in problematic situations. We are considering an alternative for small businesses that would allow such businesses, using the informal complaint process, additional time to file formal complaints if necessary. We emphasize that this informal complaint process is entirely voluntary and imposes no mandatory burden on small entities that use this process. We seek additional comment on this alternative in paragraph 9 of the Notice of Proposed Rulemaking.

Furthermore, we seek comment on other alternatives or suggestions that might simplify our informal complaint procedures or otherwise benefit small entities, while remaining consistent with our purposes in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the Initial Regulatory flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

APPENDIX B: PROPOSED RULES

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 0 – COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155

2. Section 0.453 is amended by revising paragraph (a)(2)(ii)(F) to read as follows:

§0.453 Public reference rooms.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(F) All formal complaints against common carriers filed under §§ 1.711 through 1.735 of this chapter, all documents filed in connection therewith and all communications related thereto.

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3. Add the following new paragraph (f)(4) to Section 0.457:

§ 0.457 Records not routinely available for public inspection.

(f) * * * * *

(4) Informal complaints filed under §§ 1.711 through 1.735 of this chapter, all documents filed in connection therewith, and all communications related thereto.

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4. The authority citation for Part 1 continues to read as follows:

Source: 28 FR 12415, Nov. 22, 1963, unless otherwise noted.

5. Add the following Section 1.715:

§1.715 Purpose and Scope

(a) The purpose of these rules is to establish a unified, streamlined process for the intake and resolution of complaints filed by consumers in order to promote maximum compliance with the requirements of the Communications Act of 1934, as amended, and our implementing rules and orders.

(b) These rules shall apply to all consumer complaints filed against any entities regulated by the Commission, except common carriers. Complaints against common carriers should be filed pursuant to sections 1.716 – 1.718 of these rules. The requirements contained in this subpart are not intended to preempt the adoption or enforcement of other rules established by the Commission, or any other governmental entity, as remedies in specific areas.

(c) A consumer complaint may be transmitted to the Commission by any reasonable means, including letter, facsimile transmission, telephone (voice and TTY), Internet e-mail, and audio or video cassette recording. The complaint should contain (a) the name and address of the complainant; (b) the name and address of the company against which the complaint is being made; (c) details about the product or service about which the complaint is being made; (d) a statement of facts supporting the complainant's allegation that the defendant company has acted or failed to act as required by the Act or the Commission's rules or orders; (e) if the complainant is disputing a rate or charge assessed by the defendant company, a copy of the complainant's bill setting forth the rate or charge in dispute; and (f) the specific relief or satisfaction being sought by the complainant.

(d) The Commission will forward consumer complaints to the appropriate regulated entity for investigation. The regulated entity will, within 30 days, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the entity's report or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant. In all other cases, the Commission will contact the complainant regarding its review and disposition of the matters raised.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN ABERNATHY

RE:ESTABLISHMENT OF RULES GOVERNING PROCEDURES TO BE FOLLOWED WHEN INFORMAL COMPLAINTS ARE FILED BY CONSUMERS AGAINST ENTITIES REGULATED BY THE COMMISSION, CI DOCKET NO. 02-32, NOTICE OF PROPOSED RULEMAKING (ADOPTED FEBRUARY 14, 2002).

Today's Notice has not incited a lobbying frenzy or drawn a brilliant press spotlight. Yet its subject – customer service – is of critical importance to the FCC and my work as a Commissioner. The Commission relies upon the informal complaint process to ensure maximum compliance with the Communications Act of 1934 as well as its own rules and orders.

The complaint process has grown in significance since passage of the Telecommunications Act of 1996. The Act, along with technological convergence, has created greater selection in pricing, products, and services, but also more areas for consumer confusion and concern. Since enactment, the FCC has received tens of thousands of complaints from consumers alleging violations of the Act and our rules and orders.[176]

It is past time for us to amend the complaint process. Just as effective competition demands consumers to be educated and discriminating, competition likewise calls on the Commission to be more responsive to consumer complaints. The presence of competition opens up more possibilities for fraud and abuse. In order to enjoy the benefits of competition, we have a responsibility to check that behavior.

Specifically, I support the guiding principles behind this Notice. Clarity and predictability in the complaint process are critical. We want to send a message to consumers that their voices will be heard; we want to tell businesses that infractions of Commission rules will not be tolerated. One step in that direction is creating, to the greatest extent possible, a consistent procedure for the handling of all complaints.

I also endorse the Notice's emphasis on cooperative resolution. We should encourage companies, on their own accord, to respond promptly and effectively to consumer concerns. Not all complaints require government intervention to be resolved.

But for those complaints that do require the attention of the FCC, we must provide a prompt and sure resolution. I thank the Consumer Information Bureau for its hard work in this effort. The Commission is a service-based organization, and it is important that we provide our customers, taxpayers, with the quality customer service that they deserve. I look forward to working with the Bureau, the other Commissioners, and the Chairman as we develop a full record and promulgate revised rules to facilitate this essential Commission function.

[176] *See FCC Consumer Information Bureau Releases Quarterly Report on Complaints and Inquiries Processed, Press Release*, released February 7, 2002.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS

IN THE MATTER OF: ESTABLISHMENT OF RULES GOVERNING PROCEDURES TO BE FOLLOWED WHEN INFORMAL COMPLAINTS ARE FILED BY CONSUMERS AGAINST ENTITIES REGULATED BY THE COMMISSION

I support launching this proceeding, because I believe that our process for addressing and resolving consumer complaints needs revision. That being said, I am not convinced that the proposals contained in the Notice of Proposed Rulemaking we adopt today move the process toward the stated goal of a *less* burdensome process for consumers.

The FCC has a statutory obligation to enforce the laws under our jurisdiction, particularly where the laws affect consumers. In the ***industries*** we regulate, a transgression by one company is likely to be brought to our attention, or to the attention of the infringing company, by a competitor affected by the transgression. When the violation affects a ***consumer***, however, neither the Commission nor the company is as likely to be notified, and the transgression is less likely to be addressed. As public servants, it is our responsibility to ensure that ***all*** stakeholders – consumers and corporate competitors – have effective access to the Commission's enforcement procedures.

This proceeding addresses an admirable goal – to simplify the rules by which consumers may use the Commission's good offices to gain redress for their concerns. I am concerned, however, that the procedures proposed here may in some cases complicate rather than simplify the complaint process for consumers. Were I affiliated with a company subject to the Commission's regulation, this process would not make me concerned about complaints coming from consumers.

The NPRM outlines three different ways that consumers may gain redress for their complaints – through direct complaint to the company; through the Commission's proposed informal complaint process; and through the traditional formal complaint process. We need to be crystal clear that these are options and that one process should not be a prerequisite for another. Nor must the exhaustion of one remedy preclude the utilization of another.

In creating a simplified consumer complaint process, we must not create new bureaucratic hoops through which consumers must jump before their complaints are addressed by this agency. Nor should we even give the appearance of complicating the process. The goal of this proceeding should be lowering the bar for consumer complaints, not raising it. In the redress of consumer complaints, there can be no "one size fits all" process. A consumer who finds an overcharge on his or her phone bill may ask to resolve that issue through a call to the phone company, but a consistent pattern of "cramming" may not be resolved without the Commission's proactive intervention. A call to a local television station may yield an explanation about the cancellation of a favorite program, but the enforcement of the nation's indecency laws goes beyond being a matter for simple private resolution -- it is a responsibility given the Commission by Congress.

As we work through the rulemaking proceeding we commence today, I look forward to input from all parts of the community – from consumer advocates and from companies. Each of us as citizens may have occasion to use one or more of these complaint processes someday, so I hope as many of us as possible will help us get it right as we follow up on this Notice.

SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN

Re: Establishment of Rules Governing Procedures to be Followed when Informal Complaints are Filed by Consumers Against Entities Regulated by the Commission, Notice of Proposed Rulemaking, CI Docket No. 02-32.

I write separately to support the step we take today to improve the manner in which this agency responds to consumers' complaints.

The Commission has long had a process for acting on informal complaints about common carrier services. Upon receipt of the complaint, we forward it directly to the carrier. We instruct the carrier to respond to the complaint both to the consumer and to the Commission within a certain time period. Consumers report that this process has been successful in resolving complaints in the vast majority of cases—and with no need for Commission intervention. And perhaps even more important, informal complaints provide valuable information to the Commission that it uses to monitor business practices, determine patterns of inappropriate behavior, and initiate its own investigations.

Today we propose to expand this informal complaint system to apply to all services regulated by the Commission. We thus would create one process for all informal complaints, regardless of the underlying service at issue. In so doing, we would provide consumers with another avenue for seeking redress, beyond the formal complaint process.

I hope that this proposal will benefit consumers of all types of services, and look forward to public input on this issue. For example, many parties have criticized the Commission's current treatment of complaints about offensive broadcast content, saying we place too high a burden on viewers and listeners. Generally, unless a consumer has a tape or transcript of the program in question, the Commission takes no further action on the complaint. Our practice does not even provide for the Commission to inform the broadcaster of such complaints. As a result, even when listeners or viewers complain to us that a given program is indecent, broadcasters may never hear about it.

The action we take today could be an important step in addressing this procedural concern. Under the proposed system, consumers would be ensured that business would respond to their complaints—regardless of whether the consumer provides a tape or transcript. I am hopeful that this process, if adopted, will contribute to prompt resolution of many consumer concerns.

I am interested in comment, however, on the privacy implications of our proposal. Unlike common carriers, which have a billing relationship with their customers, broadcasters are not likely to have the names and addresses of their listeners and viewers. If we forward consumers' complaints to broadcasters, will we also have a means of protecting the privacy of those consumers who do not want their personal information revealed? I look forward to engaging on this issue.

Finally, I note that this proposal to expand the informal complaint process to consumers of all services would not in any way diminish consumers' rights. It provides consumers with a *new* option—an additional outlet through which they can voice concerns about their communications services. It does not create a new regulatory burden consumers must meet before filing a formal complaint. In short, this is not another hoop through which consumers must jump. Rather, it is an additional avenue that consumers may use to lodge complaints with the Commission, obtain redress from service providers, and enable the Commission to gather the information it needs to launch investigations.