

## APPENDIX A

*Final Regulatory Flexibility Analysis*

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in PSHSB Docket 07-287 (*CMAS NPRM*). The Commission sought written public comments on the proposals in the *CMAS NPRM*, including comment on the IRFA. Comments on the IRFA were to have been explicitly identified as being in response to the IRFA and were required to be filed by the same deadlines as that established in section IV of the *CMAS NPRM* for other comments to the *CMAS NPRM*. The Commission sent a copy of the *CMAS NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *CMAS NPRM* and IRFA were published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Order**

2. Section 602(b) of the WARN Act requires the Commission to “complete a proceeding – (A) to allow any licensee providing commercial mobile service ... to transmit emergency alerts to subscribers to, or users of, the commercial mobile service provided by such license; (B) to require any licensee providing commercial mobile service that elects, in whole or in part, ... not to transmit emergency alerts to provide clear and conspicuous notice at the point of sale of any devices with which its commercial mobile service is included, that it will not transmit such alerts via the service it provides for the device; and (C) to require any licensee providing commercial mobile service that elects ... not to transmit emergency alerts to notify its existing subscribers of its election.”<sup>4</sup> Although the *CMAS NPRM* solicited comment on issues related to section 602(a) (CMS alert regulations) and 602(c) (Public Television Station equipment requirements), this *CMAS Third Report and Order* only addresses issues raised by section 602(b) of the WARN Act.<sup>5</sup> Accordingly, this IRFA only addresses the manner in which any commenters to the IRFA addressed the Commission’s adoption of standards and requirements for the *CMAS* as required by section 602(b) of the WARN Act.

3. This *CMAS Third Report and Order* adopts rules necessary to allow any CMS provider to transmit emergency alerts to its subscribers; to require that CMS providers that elect, in whole or in part, not to transmit emergency alerts provide clear and conspicuous notice at the point of sale of any CMS devices that it will not transmit such alerts via that device; and to require CMS providers that elect not to transmit emergency alerts to notify their existing subscribers of their election.

<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> 73 FR 546-01 (January 3, 2008).

<sup>4</sup> WARN Act § 602(b).

<sup>5</sup> As the First Report and Order in this docket indicated, the Commission will address the various provisions of the WARN Act and related issues in Orders within the deadlines established by the statute. See *The Commercial Mobile Alert System*, PS Docket No. 07-287, *First Report and Order*, 23 FCC Rcd 6144 ¶ 6 n. 16 (2008) (“*CMAS First Report and Order*”). Accordingly, pursuant to section 602(a) of the WARN Act, on April 9, 2008 (within 180 days of receipt of the Commercial Mobile Service Alert Advisory Committee’s (CMSAAC) recommendations) we released the *CMAS First Report and Order*, adopting technical standards, protocols, processes and other technical requirements “necessary to enable commercial mobile service alerting capability for commercial mobile service providers that voluntarily elect to transmit emergency alerts.” A Second Report and Order dealing with the provisions of section 602(c) of the WARN Act was adopted on July 8, 2008.

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

4. There were no comments filed that specifically addressed the IRFA. The only commenter that explicitly identified itself as a small business was Interstate Wireless, Inc., which supported the Commission's adoption of the Commercial Mobile Service Alert Advisory Committee's (CMSAAC) recommendations.<sup>6</sup> Interstate Wireless did not comment specifically on the IRFA, nor did it comment on any issues directly relating to section 602(b) of the WARN Act.

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

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.<sup>7</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>8</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>9</sup> 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).<sup>10</sup>

6. Wireless Telecommunications Carriers (except Satellite). Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>11</sup> Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of "Paging" and "Cellular and Other Wireless Telecommunications."<sup>12</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.<sup>13</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>14</sup> For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.<sup>15</sup> Of this total, 1,378 firms had employment of

<sup>6</sup> Interstate Wireless Comments at 1.

<sup>7</sup> 5 U.S.C. § 603(b).

<sup>8</sup> 5 U.S.C. § 601(6).

<sup>9</sup> 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." 5 U.S.C. § 601(3).

<sup>10</sup> 15 U.S.C. § 632.

<sup>11</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>12</sup> 13 C.F.R. § 121.201, NAICS codes 517211, 517212.

<sup>13</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>14</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>15</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>16</sup> Thus, using the prior categories and the available data, we estimate that the majority of wireless firms can be considered small.

7. Cellular Service. As noted, the SBA has developed a small business size standard for small businesses in the category "Wireless Telecommunications Carriers (except satellite)."<sup>17</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>18</sup> Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>19</sup> Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of "Paging" and "Cellular and Other Wireless Telecommunications."<sup>20</sup> Accordingly, the pertinent data for this category is contained within the prior Wireless Telecommunications Carriers (except Satellite) category.

8. Auctions. Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

9. Broadband Personal Communications Service. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>21</sup> For Block F, an additional small business size standard 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.<sup>22</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>23</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>24</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113

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<sup>16</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>17</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517210.

<sup>18</sup> *Id.*

<sup>19</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>20</sup> 13 C.F.R. § 121.201, NAICS codes 517211, 517212.

<sup>21</sup> 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, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

<sup>22</sup> 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, 11 FCC Rcd 7824, 7852 ¶ 60.

<sup>23</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>24</sup> FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. January 14, 1997).

small business winning bidders.<sup>25</sup> On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.<sup>26</sup> Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

10. Narrowband Personal Communications Service. The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>27</sup> Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.<sup>28</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.<sup>29</sup> 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.<sup>30</sup> A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>31</sup> The SBA has approved these small business size standards.<sup>32</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.<sup>33</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

11. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. 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

<sup>25</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” Public Notice, 14 FCC Rcd 6688 (WTB 1999).

<sup>26</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” Public Notice, 16 FCC Rcd 2339 (2001).

<sup>27</sup> Implementation of section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196 ¶ 46 (1994).

<sup>28</sup> See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” Public Notice, PNWL 94-004 (rel. Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” Public Notice, PNWL 94-27 (rel. Nov. 9, 1994).

<sup>29</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>33</sup> See “Narrowband PCS Auction Closes,” Public Notice, 16 FCC Rcd 18663 (WTB 2001).

preceding years.<sup>34</sup> The SBA has approved these definitions.<sup>35</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

12. 700 MHz Guard Bands Licenses. In the *700 MHz Guard Bands Order*, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>36</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>37</sup> Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>38</sup> SBA approval of these definitions is not required.<sup>39</sup> An auction of 52 Major Economic Area (MEA) licenses for each of two spectrum blocks commenced on September 6, 2000, and closed on September 21, 2000.<sup>40</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of remaining 700 MHz Guard Bands 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.<sup>41</sup> Subsequently, in the *700 MHz Second Report and Order*, the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel).<sup>42</sup> A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks.<sup>43</sup> Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands.

<sup>34</sup> Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

<sup>35</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>36</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, Second Report and Order, 15 FCC Rcd 5299 (2000).

<sup>37</sup> *Id.* at 5343 ¶ 108.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* At 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

<sup>40</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” Public Notice, 15 FCC Rcd 18026 (2000).

<sup>41</sup> See “700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,” Public Notice, 16 FCC Rcd 4590 (WTB 2001).

<sup>42</sup> See In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket 06-150, Second Report and Order, 22 FCC Rcd 15289, 15339-15344 ¶¶ 118-134 (2007) (700 MHz Second Report and Order).

<sup>43</sup> *Id.*

13. 700 MHz Band Commercial Licenses. There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698-757, 758-763, 776-787, and 788-793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) "small business," which is defined as an entity that has attributed average annual gross revenues that do not exceed \$15 million during the preceding three years; and (2) "very small business," which is defined as an entity with attributed average annual gross revenues that do not exceed \$40 million for the preceding three years.<sup>44</sup> In Block C of the Lower 700 MHz Band (710-716 MHz and 740-746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: an "entrepreneur," which 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.<sup>45</sup> The SBA has approved these small size standards.<sup>46</sup>

14. An auction of 740 licenses for Blocks C (710-716 MHz and 740-746 MHz) and D (716-722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses.<sup>47</sup> A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: five EAG licenses and 251 CMA licenses.<sup>48</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>49</sup>

15. The remaining 62 megahertz of commercial spectrum is currently scheduled for auction on January 24, 2008. As explained above, bidding credits for all of these licenses will be available to "small businesses" and "very small businesses."

16. Advanced Wireless Services. In the *AWS-1 Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.<sup>50</sup> The Commission did not know precisely the type of service that a licensee in these bands might seek to provide. Nonetheless, the Commission anticipated that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the *AWS-1 Report and Order* adopts the same small business size definition that the

<sup>44</sup> See Auction of 700 MHz Band Licenses Scheduled for January 24, 2008, AU Docket No. 07-157, Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, DA 07-4171 at ¶ 70 (WTB rel. Oct. 5, 2007); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), Report and Order, 17 FCC Rcd 1022, 1087-88 (2002).

<sup>45</sup> *Id.* at 1088.

<sup>46</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

<sup>47</sup> See "Lower 700 MHz Band Auction Closes," Public Notice, 17 FCC Rcd 17272 (WTB 2002).

<sup>48</sup> See "Lower 700 MHz Band Auction Closes," Public Notice, 18 FCC Rcd 11873 (WTB 2003).

<sup>49</sup> *Id.*

<sup>50</sup> Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, Report and Order, 18 FCC Rcd 25162 (2003) (AWS-1 Report and Order).

Commission adopted for the broadband PCS service and that the SBA approved.<sup>51</sup> In particular, the *AWS-1 Report and Order* defines a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The *AWS-1 Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

17. Common Carrier Paging. As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census category of "Wireless Telecommunications Carriers (except Satellite)."<sup>52</sup> Under this category, the SBA deems a business to be small if it has 1,500 or fewer employees. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>53</sup> Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of "Paging" and "Cellular and Other Wireless Telecommunications."<sup>54</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.<sup>55</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>56</sup> For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.<sup>57</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>58</sup> Thus, using the prior categories and the available data, we estimate that the majority of wireless firms can be considered small. Thus, under this category, the majority of firms can be considered small.

18. In the *Paging Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>59</sup> A "small business" is an entity that,

<sup>51</sup> See Implementation of section 309(j) of the Communications Act -- Competitive Bidding, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196 (1995); Implementation of section 309(j) of the Communications Act -- Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5581-5584 (1995); 47 C.F.R. §§ 24.320(b) and 24.720(b).

<sup>52</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>53</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>54</sup> 13 C.F.R. § 121.201, NAICS codes 517211, 517210.

<sup>55</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>56</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>57</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>58</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>59</sup> Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, ¶¶s. 291-295, 62 FR 16004 (Apr. 3, 1997).

together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with *its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.*<sup>60</sup> The SBA has approved these small business size standards.<sup>61</sup> An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>62</sup> Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 365 carriers reported that they were engaged in the provision of paging and messaging services.<sup>63</sup> Of those, we estimate that 360 are small, under the SBA-approved small business size standard.<sup>64</sup>

19. Wireless Communications Service. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction.<sup>65</sup> A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.<sup>66</sup> 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.

20. Wireless Communications Equipment Manufacturers. While these entities are merely indirectly affected by our action, we are describing them to achieve a fuller record. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.<sup>67</sup> According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.<sup>68</sup>

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<sup>60</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998).

<sup>61</sup> 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, ¶¶ 98-107 (1999).

<sup>62</sup> *Id.* at 10085, ¶ 98.

<sup>63</sup> FCC Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3., page 5-5 (Feb. 2007). This source uses data that are current as of October 20, 2005.

<sup>64</sup> *Id.*

<sup>65</sup> Public Notice, "Auction of Wireless Communications Services, Auction Notes and Filing Requirements for 128 WCS Licenses Scheduled for April 15, 1997," DA 97-386, Feb. 21, 1997.

<sup>66</sup> SBA Dec. 2, 1998 Letter.

<sup>67</sup> NAICS code 334220.

<sup>68</sup> NAICS code 11210.

21. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."<sup>69</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.<sup>70</sup> According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.<sup>71</sup> Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.<sup>72</sup> Thus, under this size standard, the majority of firms can be considered small.

22. Software Publishers. While these entities are merely indirectly affected by our action, we are describing them to achieve a fuller record. These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of \$23 million or less in average annual receipts for the category of Software Publishers. For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under \$10 million, and an additional 403 firms had receipts of between \$10 million and \$24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under \$10 million, and an additional 565 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of the firms in this category are small entities that may be affected by our action.

**A. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

23. This Report and Order may contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. If the Commission determines that the Report and Order contains collection subject to the PRA, it will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA at an appropriate time. At that time, OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that

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<sup>69</sup> U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>70</sup> 13 C.F.R. § 121.201, NAICS code 334220.

<sup>71</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

<sup>72</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

24. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities.”<sup>73</sup>

25. As noted in paragraph 2 above, this CMAS Third Report and Order deals only with the WARN Act section 602(b) requirement that the Commission adopt rules necessary to allow any CMS licensee to transmit emergency alerts to its subscribers; to require that CMS providers that elect, in whole or in part, not to transmit emergency alerts, provide clear and conspicuous notice at the point of sale of any CMS devices that it will not transmit such alerts via that device; and to require CMS providers that elect not to transmit emergency alerts, to notify their existing subscribers of their election. The entities affected by this order were largely the members of the CMSAAC. In its formation of the CMSAAC, the Commission made sure to include representatives of small businesses among the advisory committee members. Also, as we indicate by our treatment of the comments of Interstate Wireless in paragraph 4 above, the requirements and standards on which the Commission sought comment already contain concerns raised by small businesses. The WARN ACT NPRM also sought comment on a number of alternatives to the recommendations of the CMSAAC, such as the Digital EAS and FM sub-carrier based alerts.<sup>74</sup> In its consideration of these and other alternatives the CMSAAC recommendations, the Commission has attempted to impose minimal regulation on small entities to the extent consistent with our goal of advancing our public safety mission by adopting requirements and standards for a CMAS that CMS providers would elect to provide alerts and warnings to their customers. The affected CMS providers have overwhelmingly expressed their willingness to cooperate in the formation of the CMAS, and we anticipate that the standards and requirements that we adopt in this order will encourage CMS providers to work with other industry and government entities to complete and participate in the CMAS.

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<sup>73</sup> 5 U.S.C. § 603(c)(1) – (c)(4).

<sup>74</sup> *See CMAS NPRM*, 22 FCC Rcd 21975, at ¶ 39.

## APPENDIX B

## List of Commenters

## Comments in PS Docket No. 07-287

Commenters

3G Americas  
 Acision B.V. and One2Many B.V.  
 Alliance for Telecommunications Industry Solutions  
 Alltel Communications, LLC  
 American Association of Paging Carriers  
 America's Emergency Network  
 Association of Public Television Stations  
 AT&T Inc.  
 Audemat-Aztec Inc.  
 California Public Utilities Commission  
 CellCast Technologies, LLC  
 Cellular Emergency Alert Service Association – US Chapter  
 CTIA – The Wireless Association  
 DataFM, Inc.  
 Digital Alert Systems, LLC  
 Ericsson Inc.  
 Florida Association of Broadcasters  
 Global Security Systems, LLC  
 Interstate Wireless Inc.  
 Jacob Westfall  
 Kendall Post  
 Max Mayfield  
 MetroPCS Communications, Inc.  
 Mississippi Association of Broadcasters  
 Mississippi Emergency Management Agency  
 Mississippi Office of Homeland Security  
 Motorola, Inc.  
 National Association of Broadcasters  
 National Emergency Numbering Association  
 Nokia Inc. and Nokia Siemens Networks US LLC  
 Pontotoc County Emergency Management Agency  
 Purple Tree Technologies  
 Rehabilitation Engineering Research Center  
 for Wireless Technologies  
 Rural Cellular Association  
 Sheriff, Jefferson Davis Parish, Louisiana  
 SouthernLINC Wireless  
 Sprint Nextel Corporation  
 SquareLoop, Inc.  
 Telecommunications Industry Association  
 T-Mobile USA, Inc.

Abbreviation

3G Americas  
 Acision  
 ATIS  
 Alltel  
 AAPC  
 AEN  
 APTS  
 AT&T  
 Audemat-Aztec  
 CAPUC  
 CellCast  
 CEASA-US  
 CTIA  
 DataFM  
 DAS  
 Ericsson  
 FAB  
 Global  
 Interstate Wireless  
 Westfall  
 Post  
 Mayfield  
 MetroPCS  
 Mississippi Broadcasters  
 MS-EMA  
 MS-OHS  
 Motorola  
 NAB  
 NENA  
 Nokia  
 Pontotoc EMA  
 PTT  
 Wireless RERC  
 RCA  
 Sheriff  
 SouthernLINC  
 Sprint Nextel  
 SquareLoop  
 TIA  
 T-Mobile

Verizon Wireless

Verizon

**Reply Commenters**

Airadigm Communications - Einstein Wireless  
 Alltel Communications, LLC  
 American Association of Paging Carriers  
 Association of Public Television Stations  
 AT&T Inc.  
 CellCast Technologies, LLC  
 CTIA – The Wireless Association  
 Cox Radio, Inc.  
 DataFM, Inc.  
 FEMA, Director, Office of Nat'l Security Coordination  
 Global Security Systems, LLC  
 Interstate Wireless Inc.  
 King County, Washington  
 Motorola, Inc.  
 National Telecommunications Cooperative Association  
 NTI Group, Inc.  
 OnStar Corporation  
 Rural Cellular Association  
 SquareLoop, Inc.  
 T-Mobile USA, Inc.  
 Verizon Wireless

**Abbreviation**

Airadigm  
 Alltel  
 AAPC  
 APTS  
 AT&T  
 CellCast  
 CTIA  
 Cox  
 DataFM  
 FEMA  
 Global  
 Interstate Wireless  
 King County  
 Motorola  
 NTCA  
 NTI  
 OnStar  
 RCA  
 SquareLoop  
 T-Mobile  
 Verizon

**Ex Parte Commenters**

American Association of Paging Carriers  
 AT&T Inc.  
 CTIA – The Wireless Association  
 DataFM, Inc.  
 Global Security Systems, LLC  
 National Telecommunications Cooperative Association  
 OnStar Corporation  
 Rural Cellular Association

**Abbreviation**

AAPC  
 AT&T  
 CTIA  
 DataFM  
 Global  
 NTCA  
 OnStar  
 RCA

## APPENDIX C

## Final Rules

**Subpart A—General Information**

Section 10.10 is amended to read as follows:

**§ 10.10 Definitions**

(x) *“C” Interface.* The interface between the Alert Gateway and CMS provider Gateway.

(x) *CMS provider Gateway.* The mechanism(s) that supports the “C” interface and associated protocols between the Alert Gateway and the CMS provider Gateway, and which performs the various functions associated with the authentication, management and dissemination of CMAS Alert Messages received from the Alert Gateway.

(x) *CMS provider infrastructure.* The mechanism(s) that distribute received CMAS Alert Messages throughout the CMS provider’s network, including cell site/paging transceivers and perform functions associated with authentication of interactions with the Mobile Device.

(x) *Mobile Devices.* The subscriber equipment generally offered by CMS providers that supports the distribution of CMAS Alert Messages.

Section 10.11 is amended to read as follows:

**§ 10.11 CMAS Implementation Timeline**

Notwithstanding anything in this part to the contrary, a participating CMS provider shall begin an 18 month period of development, testing and deployment of the CMAS in a manner consistent with the rules in this part no later than 10 months from the date that the Federal Alert Aggregator and Alert Gateway makes the Government Interface Design specifications available.

Add a new Subpart B to read as follows:

**Subpart B—Election to Participate in Commercial Mobile Alert System****§ 10.210 CMAS Participation Election Procedures**

(a) A CMS provider that elects to transmit CMAS Alert Messages, in part or in whole, shall electronically file with the Commission a letter attesting that the Provider:

- (1) agrees to transmit such alerts in a manner consistent with the technical standards, protocols, procedures, and other technical requirements implemented by the Commission; and
- (2) commits to support the development and deployment of technology for the “C” interface, the CMS provider Gateway, the CMS provider infrastructure, and mobile devices with CMAS functionality and support of the CMS provider selected technology.

(b) A CMS provider that elects not to transmit CMAS Alert Messages shall file electronically with the Commission a letter attesting to that fact;

- (c) CMS providers shall file their election electronically to the docket;  
(d) CMS providers shall submit their letter within 30 days after the release of the Third Report and Order in PS Docket No. 08-146.

**§ 10.220 Withdrawal of Election to Participate in CMAS**

A CMS provider that elects to transmit CMAS Alert Messages, in part or in whole, may withdraw its election without regulatory penalty or forfeiture if it notifies all affected subscribers as well as the Federal Communications Commission at least sixty (60) days prior to the withdrawal of its election. In the event that a carrier withdraws from its election to transmit CMAS Alert Messages, the carrier must notify each affected subscriber individually in clear and conspicuous language citing the statute. Such notice must promptly inform the customer that he or she no longer could expect to receive alerts and of his or her right to terminate service as a result, without penalty or early termination fee. Such notice must facilitate the ability of a customer to automatically respond and immediately discontinue service.

**§ 10.230 New CMS Providers Participation in CMAS**

CMS providers who initiate service at a date after the election procedure provided for in §10.210(d) and who elect to provide CMAS Alert Messages, in part or in whole, shall file electronically their election to transmit in the manner and with the attestations described in § 10.210(a).

**§ 10.240 Notification to New Subscribers of Non-Participation in CMAS**

- (a) A CMS provider that elects not to transmit CMAS Alert Messages, in part or in whole, shall provide clear and conspicuous notice, which takes into account the needs of persons with disabilities, to new subscribers of its non-election or partial election to provide Alert messages at the point-of-sale.  
(b) The point-of-sale includes stores, kiosks, third party reseller locations, web sites (proprietary or third party), and any other venue through which the CMS provider's devices and services are marketed or sold.  
(c) CMS providers electing to transmit alerts "in part" shall use the following notification:

**NOTICE REGARDING TRANSMISSION OF WIRELESS EMERGENCY ALERTS (Commercial Mobile Alert Service)**

[[CMS provider]] has chosen to offer wireless emergency alerts within portions of its service area, as defined by the terms and conditions of its service agreement, on wireless emergency alert capable devices. There is no additional charge for these wireless emergency alerts.

Wireless emergency alerts may not be available on all devices or in the entire service area, or if a subscriber is outside of the [CMS provider] service area. For details on the availability of this service and wireless emergency alert capable devices, please ask a sales representative, or go to [[CMS provider's URL]].

Notice required by FCC Rule 47 C.F.R. § 10.240 (Commercial Mobile Alert Service).

- (d) CMS providers electing in whole not to transmit alerts shall use the following notification language:

**NOTICE TO NEW AND EXISTING SUBSCRIBERS REGARDING TRANSMISSION OF WIRELESS EMERGENCY ALERTS (Commercial Mobile Alert Service)**

[[CMS provider]] presently does not transmit wireless emergency alerts.

Notice required by FCC Rule 47 C.F.R. § 10.240 (Commercial Mobile Alert Service).

**§ 10.250 Notification to Existing Subscribers of Non-Participation in CMAS**

(a) A CMS provider that elects not to transmit CMAS Alert Messages, in part or in whole, shall provide clear and conspicuous notice, which takes into account the needs of persons with disabilities, to existing subscribers of its non-election or partial election to provide Alert messages by means of an announcement amending the existing subscriber's service agreement.

(b) For purposes of this section, a CMS provider that elects not to transmit CMAS Alert Messages, in part or in whole, shall use the notification language set forth in § 10.240 (c) or (d) respectively, except that the last line of the notice shall reference FCC Rule 47 C.F.R. § 10.250, rather than FCC Rule 47 C.F.R. § 10.240.

(c) In the case of prepaid customers, if a mailing address is available, the CMS provider shall provide the required notification via U.S. mail. If no mailing address is available, the CMS provider shall use any reasonable method at its disposal to alert the customer to a change in the terms and conditions of service and directing the subscriber to voice-based notification or to a website providing the required notification.

**§ 10.260 Timing of Subscriber Notification**

The provider notification requirements set forth in §§ 10.240 and 10.250 will become effective sixty (60) days following an announcement by the Commission that the Alert Aggregator/Gateway system is operational and capable of delivering emergency alerts to participating CMS providers.

**§ 10.270 Subscribers' Right to Terminate Subscription**

If a CMS provider that has elected to provide CMAS Alert Messages in whole or in part thereafter chooses to cease providing such alerts, either in whole or in part, its subscribers may terminate their subscription without penalty or early termination fee.

**§ 10.280 Subscribers' Right to Opt-Out of CMAS Notifications**

(a) CMS providers may provide their subscribers with the option to opt out of both, or either, the "Child Abduction Emergency/AMBER Alert" and "Imminent Threat Alert" classes of Alert Messages.

(b) CMS providers shall provide their subscribers with a clear indication of what each option means, and provide examples of the types of messages the customer may not receive as a result of opting-out.