

according to the method in 30 TAC 114.200.

The EPA proposed disapproval of the AVR SIP revision on December 19, 1997, (62 FR 66576).

## II. Comments on Proposed Disapproval

Five comments were received in response to the proposed disapproval. Four comments supported disapproval.

The Texas Natural Resource Conservation Commission commented that because the AVR submittal does not reflect current programs that are necessary to implement the scrappage program as designed, the State determined that Section 114.200 should be revised. The State intended to replace Section 114.200 with a new Section 114.200 in order to establish an AVR program that does not rely on the use of the IM240 test. The EPA agrees with Texas' plan to replace Section 114.200 with a new section if the State intends to implement a vehicle scrappage program.

The comment from the Lone Star Chapter of the Sierra Club raised issues of Environmental Justice (EJ) under Title VI of the Civil Rights Act. The Sierra Club supported the proposed disapproval and also used the comment period as an opportunity to discuss EJ as it relates to Vehicle Scrappage Programs. They protest the Texas SIP AVR Program for its inherent failure to comply with Title VI of the Civil Rights Act of 1964 which strictly prohibits discrimination on the basis of race, color, or national origin by any program receiving Federal financial assistance.

The EPA recognizes EJ as an issue that cannot and should not be ignored. For the purposes of this document, EJ and its relationship to vehicle scrappage will not be discussed because it is not germane considering the State's request to withdraw the AVR program as a revision to the SIP.

## III. Withdrawal Action

On March 23, 1998, the Governor of Texas sent a letter to EPA requesting that the Texas AVR SIP revision be removed from the SIP process. These rules are neither required by the Clean Air Act, nor part of any rate of progress plans for the State.

In this action, EPA is withdrawing the proposed disapproval because the State withdrew the 1994 AVR SIP revision. The EPA is removing this submittal from the SIP process, and no further rulemaking action will take place with regard to the 1994 AVR SIP submittal.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each

request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## IV. Administrative Requirements

### A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866, entitled "Regulatory Planning Review." This withdrawal action is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action is a withdrawal of the proposed disapproval with no associated rulemaking. Therefore I certify that it does not have an impact on any small entities.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Volatile organic compounds.

Dated: July 24, 1998.

**Jerry Clifford,**

*Acting Regional Administrator, Region 6.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 41

[FCC 98-152]

### 1998 Biennial Regulatory Review— Elimination of Part 41 Telegraph and Telephone Franks

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On July 21, 1998, the Federal Communications Commission released a Notice of Proposed Rulemaking (NPRM) that proposed to eliminate, in toto, part

41 (Telephone and Telegraph Franks) of the Commission's rules. The NPRM, part of the Commission's 1998 biennial regulatory review, tentatively concludes that the development of competition among interstate and foreign telecommunications service providers renders these regulations unnecessary.

**DATES:** Comments are due on or before August 31, 1998. Reply comments are due on or before September 10, 1998.

**ADDRESSES:** Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Suite 222, Washington, DC 20554, with a copy to Scott Bergmann of the Common Carrier Bureau, Federal Communications Commission, 2033 M Street, NW, Suite 500, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th St., NW, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Beers, Deputy Chief of the Industry Analysis Division, Common Carrier Bureau, at (202) 418-0952, or Scott K. Bergmann, Industry Analysis Division, Common Carrier Bureau, at (202) 418-7102.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking released July 21, 1998 (FCC 98-152). The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, Washington, DC 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857-3800, 1231 20th St., NW, Washington, DC 20036.

### Summary of the Notice of Proposed Rulemaking

1. In the Notice of Proposed Rulemaking (NPRM) summarized here, we propose to eliminate, in toto, part 41 (Telegraph and Telephone Franks) of the Commission's rules.<sup>1</sup> Part 41 governs the issuance of franks for interstate and foreign telegraph and telephone service by communications common carriers.<sup>2</sup> Part 41 also governs

<sup>1</sup> 47 CFR 41.1 *et seq.*

<sup>2</sup> See 47 CFR 41.11. Part 41 was adopted pursuant to section 210(a) of the Communications Act of 1934, as amended. 47 USC 210(a). In pertinent part, section 210(a) provides:

Nothing in this Act or in any other provision of law shall be construed to prohibit common carriers from issuing or giving franks to, exchanging franks

the issuance of "reports of positions of ships at sea furnished to newspapers of general circulation without charge, or at nominal charges, as authorized in section 201(b) of the Act."<sup>3</sup> Part 41 requires carriers, inter alia, to retain records of these activities.

2. We undertake this examination of part 41 of our rules pursuant to our 1998 biennial review of regulations as required by section 11 of the Communications Act, as amended.<sup>4</sup> Section 11 requires us to review all of our regulations applicable to providers of telecommunications services and to determine whether any rule is no longer in the public interest as the result of meaningful economic competition between providers of telecommunications service. We seek, consistent with the Telecommunications Act of 1996, to strike a reasonable balance between our goal of reducing and eliminating regulatory requirements as competition supplants the need for such requirements, and our recognition that, until full competition is realized, certain safeguards may still be necessary. In this case, we tentatively conclude that the development of competition among interstate and international telecommunications service providers renders part 41 unnecessary and we propose to eliminate it.

## II. Background

3. Part 41 of the Commission's rules governs the provision of franks and certain reports by communications common carriers pursuant to sections 210(a) and 201(b) of the Act. Franks enable authorized persons to send "interstate or foreign telephone or telegraph" messages, free of charge or at reduced rates, over communications facilities. Section 210 of the Act authorizes communications common carriers to issue franks and passes to other common carriers, including other communications common carriers, for the benefit of the officers, agents, and employees of the common carrier that receives the franks, and their families. As such, section 210(a) authorizes a per se class of lawful preferences that otherwise might be prohibited as

with each other for the use of, their officers, agents, employees, and their families, or subject to such rules as the Commission may prescribe, from issuing, giving, or exchanging franks and passes to or with other common carriers not subject to the provisions of this Act, for the use of their officers, agents, employees, and their families.

<sup>4</sup> 47 USC 210(a). We will refer to the Communications Act of 1934, as amended, as "the Communications Act" or "the Act."

<sup>3</sup> 47 CFR 41.31(c); 47 USC § 201(b).

<sup>4</sup> 47 USC 161.

unlawful pursuant to the terms of section 202(a).

4. Section 210(a) was adopted as part of the original Communications Act. As such, its origin was the Interstate Commerce Act of 1887, as amended.<sup>5</sup> By its own terms, section 210(a) states that the Commission may regulate the issuance of franks by common carriers subject to the Communications Act (referred to here as "communications common carriers") to common carriers not subject to the Communications Act. In contrast, section 210(a) does not specifically grant the Commission the authority to regulate the issuance of franks from communications common carriers to other communications common carriers or to themselves. In accordance with section 210(a), the Commission adopted rules, codified in part 41 of the Code of Federal Regulations, that govern the issuance of franks to common carriers not subject to the Communications Act, such as railroads. The rules were adopted and modified in a series of orders from the late 1930's and have been subject to only minor modifications since that time. Pursuant to these rules the Commission has capped the value of individual franks at \$50 per year and imposed certain recordkeeping requirements on carriers issuing franks.

5. Section 41.31(c) of the Commission's rules implements section 201(b) of the Act allowing, but not requiring, common carriers to furnish reports of the positions of ships at sea to newspapers of general circulation. Section 201(b) provides that "nothing in this Act or in any other provision of law shall prevent a common carrier subject to this Act from furnishing reports of positions of ships at sea to newspapers of general circulation, either at a nominal charge or without charge, provided the name of such common carrier is displayed along with such ship position reports."

## III. Discussion

6. As noted, section 11 of the Act directs the Commission to determine whether any regulation applicable to providers of telecommunications services "is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." We

<sup>5</sup> 49 USC 10101 *et seq.*, 10722. In an explanatory statement entered in the Congressional Record, Representative Sam Rayburn indicated that section 210(a) is "based upon section 1(7) of the Interstate Commerce Act." 78 Cong. Rec. 10313-10314. Rayburn further explained that the provision "carries over existing law permitting communications companies to exchange franks for messages and to exchange such franks with railroads for passes." *Id.*

seek comment as to whether our regulation of telephone and telegraph franking privileges and certain reports pursuant to part 41 of the rules continues to be in the public interest. For the reasons set out in the NPRM and summarized in the following paragraphs, we tentatively conclude that it does not, and we seek comment on our analysis and tentative conclusion that we should eliminate part 41 in its entirety.

7. Section 41.11 states that "franks valid for interstate and foreign telegraph or telephone service may be issued or used and free service may be rendered only in accordance with \* \* \*" the provisions of part 41. Section 41.13 nevertheless goes on to exempt certain carriers, services, and persons from much of this regulation. These exemptions reflect the limitations imposed on Commission regulation of common carrier-issued franks and passes by the terms of section 210 of the Act. Thus, for example, section 210(a) does not, on its face, authorize the Commission to regulate the issuance of franks by communications common carriers regulated under the Communications Act to their own officers, agents, employees, and their families or to other communications common carriers. Section 41.13(c) of the rules generally exempts "free or concession service now or hereafter granted to officers, agents, or employees of common carriers subject to the Act, and to their families."

8. Other sections of part 41 impose specific limitations or requirements on carriers issuing franks to other carriers not regulated by the Act, and on persons receiving such franks. Thus, §§ 41.21 and 41.22, respectively, set a specific monetary limit or cap of \$50 on the value of franks that can be issued to or used by any one person in a given year and prescribe particular requirements for issued franks. Section 41.31, inter alia, requires common carriers issuing lawful franks to maintain records of issued franks. These records must be maintained in connection with franks regulated pursuant to part 41 (§ 41.31(a)) and other franks which are specifically exempted from regulation pursuant to § 41.13 (§ 41.31(b)). In other words, regardless of whether certain carrier-issued franks are subject to the substantive limitations imposed by part 41, § 41.31 requires that communications common carriers maintain specified records for *all* issued franks, records which must be produced upon Commission demand. Finally, § 41.31(c) imposes a recordkeeping requirement on carriers who provide "reports of positions of ships at sea to

newspapers of general circulation, without charge, or at nominal charges” pursuant to section 201(b) of the Act.

9. These rules, we tentatively conclude, reflect the regulation—and, derivatively, the market structure and competitive realities—of a bygone era and are long overdue for elimination. We believe they impose unnecessary burdens on competitive carriers operating in current interstate and international markets. We propose to eliminate these rules.

10. Early Commission decisions about carrier-issued franks reflect Commission concerns that franking privileges might be used for anticompetitive purposes and might be subject to “excessive use.” For example, following an investigation of the telegraph industry initiated in 1935, i.e., within a year of the enactment of the Communications Act, the Commission discovered that some telegraph carriers were issuing franks valued at hundreds of thousands of dollars.<sup>6</sup> Assessing this practice, the Commission observed:

[W]e are convinced, that the issuance of franks and the giving away of free service by telegraph companies is used as a competitive measure; and that, as a competitive measure, it is subject to great abuse.<sup>7</sup>

The genesis of part 41 of the rules is this concern with carrier abuse of franking to achieve competitive advantage. This concern may very well have been valid in an era when telecommunications service markets were dominated by carrier monopolists and oligopolists. Indeed, in such an environment, anticompetitive abuses such as those described by the Commission in 1935 would eventually have ratepayer consequences as well. In other words, excessive issuance of franking privileges might have resulted in costs borne unfairly by ratepayers.

11. We need not, in the NPRM, recite in great detail just how the Commission’s regulation has altered as interstate and international service competition has developed in the decades since 1935. In summary form, and driven in large part by technological developments since the Second World War, the Commission embarked on a course of regulation that both stimulated and reflected the development of competitive markets. For example, in a series of orders beginning in 1982, the Commission has sought to reduce or eliminate various regulatory burdens imposed on interexchange carriers who have been found to be nondominant. Such nondominant status has even been

awarded to AT&T, with the result that all domestic interexchange service markets have now been found to be subject to competition. As a result, the Commission has stated its belief that market forces will generally ensure that the rates, practices, and classifications of nondominant interexchange carriers are just and reasonable and not unjustly or unreasonably discriminatory. In point of fact, almost all of the “interstate and foreign telegraph or telephone” services that are the subject of part 41 regulation per franks and reports are now provided in markets that the Commission has found to be competitive.

12. Because our part 41 rules were adopted at a very different time than the world of today, i.e., a time when firms providing interstate and foreign services faced a vastly different set of statutory, regulatory, economic, and operational barriers, we believe that franking regulation is no longer necessary. We believe that the discipline of competitive markets exists to restrict almost any conceivable misuse of the franking privilege, a privilege that is, we note, guaranteed by statute. It is our belief that most communications franks issued today are, in fact, concessions issued to the communications carrier’s own employees, officers, or other personnel or are franks issued to other carriers regulated by the Act. Such franks are not, pursuant to the language of section 210(a), subject to this Commission’s regulation in any event. We have, nevertheless, in § 41.31(b) of our rules, imposed carrier recordkeeping requirements in these cases. Such records are, we tentatively conclude, unnecessary to prevent anticompetitive conduct which in most, if not all cases, will be most effectively prevented by the operation of free market mechanisms. In the event that investigations by this Commission ever become necessary in such cases, we believe that we have ample authority under the Act to compel the production of carrier accounting records to assist such investigations. We further note that, for Class A and Class B telephone companies, such accounting records are kept pursuant to Commission rules and are subject at all times to the Commission’s right of inspection. Taking into account all these considerations, we tentatively conclude that we may eliminate part 41 requirements as they apply to franks for interstate and international services as issued by common carriers regulated by the Act to common carriers regulated by the Act. We seek comment on this tentative conclusion.

13. Concerning section 201(b)-authorized “reports of positions of ships

at sea,” we believe it unlikely that carriers would be able to gain an improper or unlawful competitive advantage were we to lift our § 43.31(c) recordkeeping requirement. Carriers issuing such reports exist in markets subject to the same current and developing competitive pressures described in the NPRM and as summarized *supra*. We see no reason to encumber these carriers—carriers who provide a valuable service specifically authorized by the Act—with special recordkeeping requirements and we find it unlikely that carriers are likely to abuse this provision. Accordingly, we tentatively conclude that we should eliminate § 43.31(c) of the rules, and we seek comment on this tentative conclusion.

14. In the NPRM, we tentatively conclude that no part 41 regulation is necessary and we accordingly propose to eliminate part 41, in toto. If any commenters consider that some form of regulation is required to govern the provision of franks and certain section 201(b) reports, we encourage them to suggest alternatives that are less burdensome than those currently set out in part 41. Such commenters, to the extent that they wish to retain part 41 regulation, should present a cost-benefit analysis addressing the costs of compliance, including direct costs and burdens on companies, regulators, customers and taxpayers, as well as any indirect costs. The statute affords the Commission wide discretion in determining the contours of the public interest. We also note that many costs and benefits of regulation may be difficult, if not impossible to quantify. As a general matter, however, we will not maintain a regulation pursuant to the section 11 public interest analysis where we determine that the costs of the regulation exceed the benefits. We seek comment on this approach. Overall, we seek comment on any and all analysis and conclusions contained in the NPRM.

#### IV. Procedural Matters

##### A. Initial Regulatory Flexibility Act Analysis

15. As required by the Regulatory Flexibility Act (RFA),<sup>8</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA), summarized here, of the possible significant economic impact on small entities by

<sup>8</sup>See 5 USC 603. The RFA, see 5 USC 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>6</sup> 1935 *Telegraph Franks Order*, 1 FCC 291, 295-296.

<sup>7</sup> 1935 *Telegraph Franks Order*, 1 FCC 291, 295.

the policies and rules proposed in this 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 this NPRM provided above on the first page. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>9</sup> In addition, this NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>10</sup>

16. *Need for, and Objectives of, the Proposed Action.* The Commission undertakes this examination of Part 41<sup>11</sup> of its rules as a part of its 1998 biennial review of regulations as required by section 11 of the Communications Act, as amended.<sup>12</sup> Our objective is to reduce or eliminate unnecessary or duplicative regulatory requirements as competition supplants the need for such requirements, consistent with section 11 of the Communications Act, as amended,<sup>13</sup> and the Telecommunications Act of 1996.<sup>14</sup> The NPRM seeks comment as to whether the Commission's regulation of telephone and telegraph franking privileges and certain reports concerning "ships at sea" pursuant to part 41 of the rules continues to be in the public interest. The NPRM tentatively concludes that the development of competition among interstate and international telecommunications service providers renders Part 41 unnecessary and proposes to eliminate it, in toto.

17. *Legal Basis.* The legal basis for the action as proposed for this rulemaking is contained in sections 1, 4(i) and (j), 11, 201-205, 210, 218 and 403 of the Communications Act of 1934, as amended, 47 USC 151, 154(i) and (j), 161, 201-205, 210, 218, and 403.

18. *Description and Estimate of the Number of Small Entities to Which the Proposed Action May Apply.* Part 41 governs the issuance of franks (authorized pursuant to section 210 of the Act) and certain reports of ships at sea (authorized pursuant to section 201(b)) by all common carriers subject to the Communications Act of 1934, as amended. This NPRM asks commenters to address the extent to which

communications common carriers currently utilize these statutory privileges—the issuance of franks and reduced cost reports on the positions of ships at sea—so that the Commission may determine the actual burden imposed by part 41 on these common carriers. In the absence of a more complete record, we note that the proposals set forth in this proceeding may have an economic impact on a substantial number of small telephone companies, i.e. all common carriers subject to the Act. The economic impact of these proposals would, of course, be a positive and beneficial impact, in the form of reduced regulatory burdens and recordkeeping requirements, for these common carriers.

19. To estimate the number of small entities that would benefit from this positive economic impact, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."<sup>15</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>16</sup> Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>17</sup> The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.<sup>18</sup> We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of

telephone companies that are commonly used under our rules.

20. We expect that the rules in part 41—and the privileges regulated therein—have only been utilized by a limited class of entities, specifically the Bell Operating Companies and certain other providers of local exchange and interexchange telecommunications services. Nevertheless, given that the language of sections 201(b) and 210(a) speaks broadly of "common carriers" we analyze a wide range of categories in an effort to identify the greatest number of small entities possible that could be effected by the proposals in this NPRM. Thus, in some cases below, we expect that not all of the entities within a given category offer common carrier services, let alone issue franks or reports of ships at sea pursuant to part 41. In all cases, of course, entities affected by this proposal would not lose any of their statutorily-granted rights under sections 201(b) or 210(a) and would enjoy a positive economic impact from reduced regulation of those privileges.

21. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS).<sup>19</sup> According to data in the most recent report, there are 3,459 interstate carriers.<sup>20</sup> These carriers 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 toll service, providers of telephone exchange service, and resellers.

22. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution,

<sup>15</sup> 5 USC 601(6).

<sup>16</sup> 5 USC 601(3) (incorporating by reference the definition of "small business concern" in 5 USC 632). Pursuant to 5 USC 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 in the **Federal Register**."

<sup>17</sup> 15 USC 632. See, e.g., *Brown Transport Truckload, Inc. v. Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

<sup>18</sup> 13 CFR 121.201.

<sup>19</sup> FCC, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (*Telecommunications Industry Revenue*).

<sup>20</sup> *Id.*

<sup>9</sup> See 5 USC 603(a).

<sup>10</sup> See *id.*

<sup>11</sup> 47 CFR 41.1 et seq.

<sup>12</sup> 47 USC 161.

<sup>13</sup> *Id.*

<sup>14</sup> Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996 Act), codified at 47 USC 151 et seq. See Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996) (Joint Explanatory Statement).

however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."<sup>21</sup>

23. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>22</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."<sup>23</sup> For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this NPRM.

24. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>24</sup> According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.<sup>25</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers

are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules recommended for adoption in this NPRM.

25. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).<sup>26</sup> According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services.<sup>27</sup> 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 LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,371 small entity LECs or small incumbent LECs that may be affected by the decisions and rules recommended for adoption in this NPRM.

26. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone companies.<sup>28</sup> The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 143 companies reported that they were engaged in the provision of interexchange services.<sup>29</sup> 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 IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the decisions and rules recommended for adoption in this NPRM.

27. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 109 companies reported that they were engaged in the provision of competitive access services.<sup>30</sup> 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 CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the decisions and rules recommended for adoption in this NPRM.

28. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 27 companies reported that they were engaged in the provision of operator services.<sup>31</sup> Although it seems certain that some of these companies 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 operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate

<sup>21</sup> See 13 CFR 121.201, SIC Code 4813.

<sup>22</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

<sup>23</sup> 15 USC 632(a)(1).

<sup>24</sup> 1992 Census, *supra*, at Firm Size 1-123.

<sup>25</sup> 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4813.

<sup>26</sup> See 47 CFR 64.601 *et seq.*

<sup>27</sup> *Telecommunications Industry Revenue* at Fig. 2.

<sup>28</sup> 13 CFR 121.210, SIC Code 4813.

<sup>29</sup> *Telecommunications Industry Revenue* at Fig. 2.

<sup>30</sup> *Telecommunications Industry Revenue* at Fig. 2.

<sup>31</sup> *Telecommunications Industry Revenue* at Fig. 2.

that there are fewer than 27 small entity operator service providers that may be affected by the decisions and rules recommended for adoption in this NPRM.

29. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies.<sup>32</sup> The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 339 companies reported that they were engaged in the resale of telephone services.<sup>33</sup> 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 resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the decisions and rules recommended for adoption in this NPRM.

30. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.<sup>34</sup> According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.<sup>35</sup> The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate

that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules recommended for adoption in this NPRM.

31. *Cellular and Mobile Service Carriers.* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies.<sup>36</sup> The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 804 companies reported that they are engaged in the provision of cellular services and 117 companies reported that they are engaged in the provision of mobile services.<sup>37</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 804 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the decisions and rules recommended for adoption in this NPRM.

32. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission 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. 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, ¶¶ 57-60 (June 24, 1996), 61 FR

33859 (July 1, 1996); see also 47 CFR 24.720(b). 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.<sup>38</sup> These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA.<sup>39</sup> 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. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commissioner's auction rules.

33. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA,<sup>40</sup> and approval for the 900 MHz SMR definition has been sought. The rules proposed in this NPRM may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how

<sup>38</sup> *Id.*, at ¶ 60.

<sup>39</sup> *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).

<sup>40</sup> See *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

<sup>32</sup> 13 CFR 121.210, SIC Code 4813.

<sup>33</sup> *Telecommunications Industry Revenue* at Fig. 2.

<sup>34</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

<sup>35</sup> 13 CFR 121.201, SIC Code 4812.

<sup>36</sup> *Id.*

<sup>37</sup> *Telecommunications Industry Revenue* at Fig. 2.

many of these providers have annual revenues of less than \$15 million. We assume, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, that may be affected by the decisions and rules recommended for adoption in this NPRM.

34. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees that may be affected by the decisions and rules proposed in this NPRM includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this IRFA, that all of the licenses may be awarded to small entities who may be affected by the decisions recommended for adoption in this NPRM.

35. *220 MHz Radio Services.* Because the Commission has not yet defined a small business with respect to 220 MHz services, we will utilize the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.<sup>41</sup> With respect to 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees, a firm with average annual gross revenues of not more than \$6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than \$15 million for the preceding three years. Given that nearly all radiotelephone companies under the SBA definition employ no more than 1,500 employees (as noted supra), we will consider the approximately 1,500 incumbent licensees in this service as

small businesses under the SBA definition.

36. *Private and Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services.<sup>42</sup> Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.<sup>43</sup> At present, there are approximately 24,000 Private Carrier Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *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.<sup>44</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of 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 the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

37. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561

<sup>42</sup> See 47 CFR 20.9(a)(1) (noting that private paging services may be treated as common carriage services).

<sup>43</sup> 13 CFR 121.201, SIC Code 4812.

<sup>44</sup> *Telecommunications Industry Revenue* at Figure 2.

MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

38. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>45</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>46</sup> We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.<sup>47</sup> 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.

39. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.<sup>48</sup> Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.<sup>49</sup> There are approximately 100 licensees in the Air Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

40. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities.<sup>50</sup> These radios are used by companies of all sizes operating in all U.S. business categories. 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

<sup>45</sup> The service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

<sup>46</sup> BETRS is defined in §§ 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757, 22.759.

<sup>47</sup> 13 CFR 121.201, SIC Code 4812.

<sup>48</sup> The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

<sup>49</sup> 13 CFR 121.201, SIC Code 4812.

<sup>50</sup> See 47 CFR 20.9(a)(2) (noting that certain Industrial/Business Pool service may be treated as common carriage service).

<sup>41</sup> 13 CFR 121.201, SIC Code 4812.

to be evaluated within its own business area.

41. The Commission is unable at this time to estimate the number of, if any, small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs<sup>51</sup> 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.

42. *Fixed Microwave Services.* Microwave services include common carrier,<sup>52</sup> private-operational fixed,<sup>53</sup> and broadcast auxiliary radio services.<sup>54</sup> At present, there are approximately 22,015 common carrier fixed 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 utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with no more than 1,500 persons.<sup>55</sup> We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

43. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.<sup>56</sup> At present, there are approximately 55 licensees in this service. We are unable at this time to

estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

44. *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 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.

45. *Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements.* The proposals under consideration in the NPRM would reduce the reporting and recordkeeping requirements on common carriers regulated under the Communications Act. Part 41 imposes specific limitations or requirements on carriers issuing franks to other carriers not regulated by the Act, and on persons receiving such franks.<sup>57</sup> For example, § 41.31(a) and (b), *inter alia*, require common carriers issuing lawful franks to maintain records of issued franks. Similarly, § 41.31(c) imposes a recordkeeping requirement on carriers who provide "reports of positions of ships at sea to newspapers of general circulation, without charge, or at nominal charges" pursuant to section 201(b) of the Act.<sup>58</sup> The NPRM proposes to eliminate part 41 which should provide a positive economic impact on affected companies, including small entities.

46. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The impact of this proceeding should be beneficial to small businesses because the proposals set out in the NPRM would reduce the reporting or recordkeeping requirements on all communications common carriers. As noted in the NPRM,<sup>59</sup> we seek comment on whether any level of regulation currently within Part 41 should be retained.

47. *Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule.* None.

#### B. Ex Parte Presentations

48. This proceeding will be treated as a "permit-but-disclose" proceedings subject to the "permit-but-disclose" requirements under § 1.1206 of the Commission's rules, as revised.<sup>60</sup> Additional rules pertaining to oral and written presentations are set forth in § 1.1206.<sup>61</sup>

#### C. Comment Filing Procedures

49. General. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties shall file comments not later than August 31, 1998, and reply comments not later than September 10, 1998. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and twelve copies. Comments and reply comments should be sent to the Secretary, Federal Communications Commission, 1919 M Street, NW, Room 222, Washington, DC 20554, with copies to: Thomas J. Beers, Common Carrier Bureau, Industry Analysis Division, 2033 M Street, NW, Room 500, Washington, DC 20554; Scott K. Bergmann, Common Carrier Bureau, Industry Analysis Division, 2033 M Street, NW, Room 500, Washington, DC 20554. Parties should file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., NW, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW, Room 239, Washington, DC 20554.

50. Other requirements. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules.<sup>62</sup> We also 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.

51. Commenters may also file informal comments or an exact copy of formal comments electronically via the Internet at: <<http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload.hts>>. Only one copy of electronically filed comments must be

<sup>51</sup> Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

<sup>52</sup> 47 CFR 101 et seq. (formerly, part 21 of the Commission's rules).

<sup>53</sup> 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 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.

<sup>54</sup> Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. See 47 CFR 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.

<sup>55</sup> 13 CFR 121.201, SIC Code 4812.

<sup>56</sup> This service is governed by subpart I of part 22 of the Commission's rules. See 47 CFR 22.1001–22.1037.

<sup>57</sup> See, e.g., 47 CFR 41.21, 41.22, 41.31, 41.32.

<sup>58</sup> 47 CFR 41.31(c) and citing 47 USC 201(b).

<sup>59</sup> See supra, ¶ 10.

<sup>60</sup> 47 CFR 1.1206.

<sup>61</sup> *Id.*

<sup>62</sup> See 47 CFR 1.49.

submitted. Commenters must note on the subject line whether an electronic submission is an exact copy of formal comments. Commenters also must include their full name and U.S. Postal Service mailing address in their submissions. Further information on the process of submitting comments electronically is available at that location and at <<http://www.fcc.gov/e-file>>.

52. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to: Ms. Terry Conway, Common Carrier Bureau, Industry Analysis Division, 2033 M Street, NW, Room 500, Washington, DC 20554. Such diskettes should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

[FR Doc. 98-20819 Filed 8-4-98; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 98-135, RM-9300]

#### Radio Broadcasting Services; Lufkin, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Russell L. Lindley, proposing the allotment of Channel 261A to Lufkin, Texas. The channel can be allotted to Lufkin at coordinates 31-16-13 and 94-43-50. There is a site restriction 8.5 kilometers (5.3 miles) south of the community.

**DATES:** Comments must be filed on or before September 21, 1998, and reply comments on or before October 6, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioner's counsel, as follows: Howard J. Barr, Patricia M. Chuh, Lee G. Petro, Pepper & Corazzini, L.L.P., 1176 K Street, N.W., Suite 200, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-135, adopted July 22, 1998, and released July 31, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-20818 Filed 8-4-98; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 98-138, RM-9309]

#### Radio Broadcasting Services; Whitehall, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Whitehall Broadcasting Company

proposing the allotment of Channel 274A to Whitehall, Montana, as that community's first local broadcast service. The channel can be allotted to Whitehall with a site restriction 12.7 kilometers (7.9 miles) northwest of the community. The coordinates for Channel 274A are 45-56-11 and 112-13-51.

**DATES:** Comments must be filed on or before September 21, 1998, and reply comments on or before October 6, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Andrew S. Kersting, Fletcher, Heald & Hildreth, P.L.C., 1300 N. Seventeenth Street, 11th Floor, Arlington, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-138, adopted July 22, 1998, and released July 31, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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