

disproportionate impact on small entities.

28. *Report to Congress:* The Commission will send a copy of the *Second Order on Reconsideration*, including the Second Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Fairness Act of 1996. A copy of the *Second Order on Reconsideration* and this Second Supplemental FRFA (or summary thereof) will also be published in the **Federal Register** and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

[FR Doc. 98-32808 Filed 12-9-98; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 96-45; FCC 98-278]

### Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; interim guidelines.

**SUMMARY:** On July 18, 1997, the Commission released a draft copy of the Universal Service Worksheet (Worksheet) which requires contributors to list their revenues by certain categories. In response to the release of the draft Worksheet, several wireless telecommunications providers requested clarification on how, for purposes of completing the Worksheet, entities that cannot derive various revenue data directly from their books of account should calculate the requested revenue information. In this document, the Commission addressed the concerns of wireless telecommunications providers with regard to certain aspects of universal service administration.

**DATES:** Effective: December 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Lori Wright, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document released on October 26, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554.

### I. Introduction

1. In this Memorandum Opinion and Order (Order), we provide wireless

telecommunications providers with interim guidelines for reporting on FCC Form 457, the Universal Service Worksheet (Worksheet) their percentage of interstate wireless telecommunications revenues. Specifically, until we issue final rules regarding the mechanisms that wireless telecommunications providers should use in allocating their wireless telecommunications revenues between the interstate and intrastate jurisdictions, we establish "safe-harbor" percentages that we believe reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. These percentages can be used for purposes of calculating these providers' federal universal service contribution obligations. We conclude that wireless telecommunications providers that report on the Worksheet a percentage of interstate wireless telecommunications revenues that is less than the "safe harbor" percentage established for that category of provider should continue to document how they arrived at their reported percentage and make such information available to the Commission or the universal service Administrator upon request.

### *Interim Guidelines for Separating Interstate and Intrastate Revenues*

2. In this Order, we provide wireless telecommunications providers with additional interim guidance on reporting their wireless interstate telecommunications revenues for purposes of universal service contributions. We share the concern expressed by Comcast and Vanguard that some CMRS carriers presently may have an unreasonable advantage in the market as a result of either unintentional or purposeful under-reporting of their end-user interstate telecommunications revenues. To illustrate, some CMRS providers reported seven percent of their CMRS revenues as interstate, while others reported 28 percent as interstate. We anticipate that the interim safe harbor, in combination with our willingness to inquire about individual carriers' methods for calculating interstate revenues, will address this matter until we develop final rules.

3. The *NECA II Order*, 62 FR 47369 (September 9, 1997), permitted contributors that cannot readily derive interstate revenues from their books of account to provide on the Worksheet good faith estimates of these figures pending final Commission resolution of this issue. The *NECA II Order* also directed such contributors to document

how they calculated their estimates and to make such information available to the Commission or Administrator upon request. In this Order, we identify, on an interim basis, suggested, or "safe harbor," percentages that we believe reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. We identify the safe harbor percentages set forth below in response to the requests of wireless telecommunications providers for specific guidance beyond that provided in the *NECA II Order* and for expeditious resolution of the issues raised by these providers. The safe harbor percentage suggested for each category of provider is set forth below. Wireless telecommunications providers that choose to avail themselves of these suggested percentages may assume that the Commission will not find it necessary to review or question the data underlying their reported percentages. Conversely, a provider that elects to report a percentage of interstate telecommunications revenues that is less than the "safe harbor" percentage established for that category of provider should document the method used to calculate its percentage and make that information available to the Commission or Administrator upon request. The Commission retains its authority to require carriers that report interstate revenues below the safe harbors to document, perhaps through traffic studies, the method by which they arrived at their reported percentage of interstate telecommunications revenues.

4. We emphasize that these percentages are intended only to provide guidance to carriers in reporting on the Worksheet their percentage of interstate wireless telecommunications revenues and are not prescriptive in nature. The Commission may elect to adopt final prospective rules that deviate from the interim guidance provided here. Accordingly, we note that our guidance here is an interim measure pending final Commission resolution of these issues.

5. *Cellular, broadband PCS, and digital SMR providers.* We establish a safe harbor percentage of interstate revenues for cellular and broadband PCS providers of 15 percent of their total cellular and broadband PCS telecommunications revenues. The Commission, therefore, will not seek supporting data from cellular and broadband PCS providers regarding their reported percentage of interstate telecommunications revenues if they report at least 15 percent of their

cellular and broadband PCS telecommunications revenues as interstate. We reach this determination based on the level of interstate traffic experienced by wireline providers. Several wireless telecommunications providers have suggested that the Commission consider establishing for cellular and broadband PCS providers a safe harbor percentage of interstate cellular and broadband PCS revenues based on the percentage of interstate wireline traffic reported for purposes of the Dial Equipment Minutes (DEM) weighting program, i.e., approximately 15 percent. Current Commission statistics indicate that the nationwide average percentage of interstate wireline traffic reported for purposes of the DEM weighting program is approximately 15 percent. We believe it is reasonable to use this percentage as a proxy for the percentage of interstate wireline traffic as whole. Furthermore, we note that we do not have evidence before us to indicate that the level of interstate wireless traffic experienced by cellular and broadband PCS providers is less than the level experienced by wireline providers. We find that establishing a safe harbor that assumes that wireless carriers receive interstate and intrastate revenues in similar proportions to wireline carriers represents a conservative estimate, and that such a conservative approach is reasonable as an interim safe harbor. Moreover, unlike paging and analog SMR providers, cellular and broadband PCS providers have not, as a group, reported on the Worksheet sufficiently similar percentages of interstate cellular and broadband PCS revenues.

6. *Paging providers.* We establish a safe harbor percentage of interstate revenues for paging providers of 12 percent of their total paging revenues. Therefore, paging providers that report at least 12 percent of their paging revenues as interstate will not be asked by the Commission to provide documentation supporting their reported level of interstate telecommunications revenues. Our determination is based on the fact that paging providers, as a group, reported on the Worksheets due on March 31 that approximately 12 percent of their paging revenues generated in the 1997 calendar year was interstate. We realize that the percentage of interstate telecommunications revenues derived from the provision of paging service may vary according to the amount of local service versus nationwide service

that a paging carrier provides. Therefore, with regard to a paging carrier that reports less than 12 percent of their revenues as interstate, we will consider the amount of local service versus nationwide service that such a carrier provides. We believe that, until the Commission issues final rules regarding the mechanisms that paging providers should use to allocate their revenues between the interstate and intrastate jurisdictions, it is reasonable to establish a safe harbor based on the average percentage of interstate paging revenues reported by paging providers for 1997.

7. *SMR providers.* We establish a safe harbor percentage for analog Specialized Mobile Radio (SMR) providers of one percent of their total revenues derived from the provision of analog SMR service. Therefore, if analog SMR providers report at least one percent of their analog SMR revenues as interstate, the Commission will not seek supporting documentation from those analog SMR providers that indicate in Block 4 of the Worksheet that their principal communications business is "SMR/dispatch." We reach this determination based on the fact that these analog SMR providers, as a group, reported on the Worksheets due on March 31 that approximately one percent of their analog SMR revenues generated in the 1997 calendar year was interstate. As with the safe harbor percentage we establish for paging providers, we believe that it is reasonable to establish an interim safe harbor percentage based on the average interstate revenues percentage reported by analog SMR providers for 1997.

## II. Procedural Matters and Ordering Clauses

### A. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Order. In addition, the Order and IRFA (or summaries thereof) will be published in the **Federal Register**.

9. *Description of Projected Reporting, Record keeping, and Other Compliance Requirements.* Section 254(d) states "that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions" toward the preservation

and advancement of universal service. Under the Commission's rules, all telecommunications carriers that provide interstate telecommunications services and some providers of interstate telecommunications are required to contribute to the universal service support mechanisms. Contributions for support for programs for high cost areas and low-income consumers are assessed on the basis of interstate and international end-user telecommunications revenues. Contributions for support for programs for schools, libraries, and rural health care providers are assessed on the basis of interstate, intrastate, and international end-user telecommunications revenues. Contributors are required to submit information on the Universal Service Worksheet regarding their end-user telecommunications revenues. Contributors are required to distinguish between their interstate and intrastate revenues. In this Order, we provide interim safe harbor percentages that carriers may use in reporting their interstate telecommunications revenues. Under our interim guidance, those carriers that choose not to report the safe harbor percentage may be required to perform reporting and record keeping assignments in order to use a different percentage. This task may require some administrative, accounting, and legal skills.

10. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Memorandum Opinion and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### B. Ordering Clauses

It is ordered, pursuant to sections 1, 4(i) and (j), 201-209, 218-222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201-209, 218-222, 254, and 403 that this Memorandum Opinion and Order is hereby adopted.

### List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

[FR Doc. 98-32802 Filed 12-9-98; 8:45 am]

BILLING CODE 6712-01-P