

Docket, Docket No. A-93-02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: March 30, 2001.

**Robert D. Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

[CC Docket No. 90-571; FCC 01-89]

#### Telecommunications Relay Services and the American With Disabilities Act of 1990

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This *Second Further Notice of Proposed Rulemaking* seeks comment on whether to modify the Federal Communication Commission's (FCC) rules to permit telecommunications relay service (TRS) providers to treat coin sent-paid TRS calls in a manner different from all other calls, or to suspend permanently the enforcement of the requirement that TRS be capable of handling any type of call with respect to coin sent-paid calls. Additionally, the FCC seeks input on its proposed rules to provide functionally equivalent payphone service to TRS users in order to develop a sound policy on the obligations of TRS providers with respect to coin sent-paid calls.

**DATES:** Comments due May 7, 2001. Reply comments due May 21, 2001. Written comments by the public on the proposed information collections are due May 7, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before June 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pam Slipakoff, 202/418-7705, Fax 202/418-2345, TTY 202/418-0484, pslipako@fcc.gov, Network Services Division, Common Carrier Bureau.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW., Washington, DC 20503 or via the Internet to [Edward.Springer@omb.eop.gov](mailto:Edward.Springer@omb.eop.gov).

For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Second Further Notice of Proposed Rulemaking, CC Docket No. 90-571, FCC 01-89 (Second Further NRPM)*, adopted March 13, 2001 and released March 16, 2001. The full text of the *Second Further NRPM* is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554, or copies may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW, Suite CY-B400, Washington, DC 20554, phone (202) 857-3800.

This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

#### Paperwork Reduction Act

1. This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**OMB Control Number:** 3060-0789.

**Title:** Modified Alternative Plan, CC Docket No. 90-571.

**Form No.:** N/A.

**Type of Review:** Proposed Revision of Existing Collection.

**Respondents:** Business or other for-profit institutions.

Title	Number of respondents	Hours per response	Total annual burden (hours)
a. Letter to CAN Members .....	30	4	120
b. Create & Distribute Laminated Cards .....	30	15	450
c. Display Instructions .....	30	15	450
d. Display on Internet .....	30	4	120
e. Publication in Directory .....	30	4	120
f. Status Reports .....	30	4	120

**Total Annual Burden:** 1380 hours.

**Cost to Respondents:** \$0.

**Needs and Uses:** The information obtained from this collection will be used to provide TRS users with information regarding their ability to

make relay calls from payphones during the suspension of the rules.

#### Synopsis of the Second Further Notice of Proposed Rulemaking CC Docket No. 90-571

2. Title IV of the Americans with Disabilities Act (ADA), which is codified at section 225 of the

Communications Act of 1934, as amended (the Act), mandates that the Commission ensure that interstate and intrastate telecommunications relay services (TRS) are available, to the extent possible and in the most efficient manner, to individuals in the United States with hearing and speech disabilities. Title IV aims to further the Act's goal of universal service by providing to individuals with hearing or speech disabilities, telephone services that are functionally equivalent to those available to individuals without such disabilities. The Commission is fully committed to furthering these goals in the manner directed by Congress.

3. The ADA requires the Commission to establish functional requirements, guidelines, and operational procedures for TRS, and to establish minimum standards for carriers' provisioning of TRS. To establish a TRS that provides services which are functionally equivalent to telephone services available to voice users, Congress directed, among other things, that the Commission prohibit TRS providers from "failing to fulfill the obligations of common carriers by refusing calls." In its *First Report and Order*, 56 FR 36729 (Aug. 1, 1991), on TRS, the Commission interpreted this ADA mandate to require TRS providers to handle "any type of call normally provided by common carriers," and placed the burden of proving the infeasibility of handling a particular type of call on the carriers. The Commission interpreted "any type of call" to include coin sent-paid calls, which are calls made by depositing coins in a standard coin-operated public payphone. Subsequent concerns about the technical difficulties associated with handling coin sent-paid calls through TRS centers, however, resulted in multiple suspensions of the mandate for TRS providers to handle these types of calls. The Commission issued the first of these suspensions in 1993; the most recent of these suspensions remains in effect through May 26, 2001.

4. Because no technological solution to the coin sent-paid issue appears imminent, the FCC issues this *Second Further Notice of Proposed Rulemaking (Second Further NRPM)* to determine the best plan to make the full range of payphone services available to TRS users. Section 225 of the Act requires the Commission to ensure that interstate and intrastate relay services are available throughout the country and to promulgate regulations prohibiting relay operators from failing to fulfill the obligations of common carriers by refusing calls. Thus, the Commission has a responsibility to seek further information on the coin sent-paid issue

in order to provide persons with hearing and speech disabilities with the most efficient manner of utilizing TRS from payphones. Furthermore, the Commission has a responsibility under section 225(d)(1)(D) of the Act to ensure that "users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communications services \* \* \*."

As a result of this obligation, the Commission must determine if the coin sent-paid rules are efficient and cost-effective for TRS users. In this *Second Further NRPM*, the FCC seeks comment on various proposals to provide functionally equivalent service to TRS users. The FCC specifically proposes that telephone carriers: (1) Not charge TRS users for making relay calls that would otherwise be local from payphones; (2) enable TRS users to use calling cards, collect or third party billing for toll calls from payphones and not charge more than the lower of the coin sent-paid rate or the rate for the calling card, collect or third-party billing; and, (3) conduct extensive consumer education programs to educate TRS users about their payphone calling options.

#### Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in this *Second Further Notice of Proposed Rulemaking (Further Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further NRPM*. The Commission will send a copy of the *Second Further NRPM* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the *Second Further NRPM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

6. The Commission is issuing this *Second Further NRPM* to seek comment on whether to modify the Commission's rules to permit telecommunications relay service (TRS) providers to treat coin sent-paid TRS calls in a manner different from all other calls, or to suspend permanently the enforcement of the requirement that TRS be capable of handling any type of call with respect to coin sent-paid calls. Additionally, the Commission seeks input on its proposed rules to provide functionally equivalent payphone service to TRS users in order

to develop a sound policy on the obligations of TRS providers with respect to coin sent-paid calls.

7. The authority for actions proposed in this *Second Further NRPM* may be found in sections 1, 2, 4, 225, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 1, 2, 4, 225, 303(r).

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of 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) satisfies any additional criteria established by the Small Business Administration (SBA). The rules the FCC is considering in this proceeding, will affect TRS providers, pay telephone operators and wireline carriers and service providers.

9. 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 TRS.

10. *TRS Providers*. Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. According to the FCC's most recent data, there are 11 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. The FCC does not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and the FCC is thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. The FCC notes, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, the FCC estimates that there are fewer

than 11 small TRS providers that may be affected by the proposed rules, if adopted. The FCC seeks comment generally on its analysis identifying TRS providers, and specifically on whether the FCC should conclude, for Regulatory Flexibility Act purposes, that any TRS providers are small entities.

11. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Trends in Telephone Service data, 615 carriers reported that they were engaged in the provision of pay telephone services. The FCC does 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 pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, the FCC estimates that there are less than 615 small entity pay telephone operators.

12. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. 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 local exchange carriers (LECs). The FCC does not have data specifying the number of these carriers that are not independently owned and operated, and thus 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 the SBA's definition. Consequently, the FCC estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs.

13. The FCC has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and is not dominant in its field of operation. The SBA's Office of Advocacy contends that for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The FCC has therefore included small incumbent LECs in this RFA analyses, although the FCC emphasizes that this RFA action has no effect on FCC analyses and determination in other, non-RFA contexts.

14. The proposed rules may require carriers to submit status reports on any new technologies that can provide coin sent-paid calls through the TRS centers. Any additional costs incurred as a result of this proceeding should be nominal because the entities affected, including any small businesses, have been in compliance with the *Interim Plan Order*. Thus, the Commission expects that the proposals will have minimal impact on small entities. The FCC tentatively concludes that the proposals in the *Second Further NRPM* would impose minimum burdens on small entities. The FCC seeks comment on the tentative conclusion.

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c). The Commission has tentatively concluded that the proposed rules will have minimal impact on small entities.

#### Report to Congress

16. The Commission will send a copy of this *Second Further Notice of Proposed Rulemaking*, including a copy of this IRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the *Second Further Notice of Proposed Rulemaking* and this IRFA will be sent to the Chief Counsel for Advocacy of the Small Business

Administration, and will be published in the **Federal Register**.

#### Ordering Clauses

17. Pursuant to the authority contained in 47 CFR 0.91(a), 0.204, 0.291 and 1.3, enforcement of the requirement that Telecommunications Relay Services must be capable of handling coin sent-paid calls, as required by 47 CFR 64.604(a)(3), IS SUSPENDED pending the publication in the **Federal Register** of final rules adopted in this proceeding.

18. Common carriers providing telephone voice transmission services, and TRS providers, shall continue to make payphones accessible to TRS users pursuant to the terms of the Alternative Plan set forth in the *1997 Suspension Order*.

19. Pursuant to sections 1, 2, 4, 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 303(r), the Second Further Notice of Proposed Rulemaking is hereby Adopted.

20. The Commission's Consumer Information Bureau, Reference Information Center, Shall Send a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration.

21. The Initial Regulatory Flexibility Analysis for this Second Further Notice of Proposed Rulemaking, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, is contained herein.

Federal Communications Commission.

Magalie Roman Salas,  
Secretary.

[FR Doc. 01-8392 Filed 4-4-01; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 101

[ET Docket No. 98-206, RM-9147, RM-9245, DA 01-754]

### Multichannel Video and Data Distribution Service (MVDDS)

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of time period.

**SUMMARY:** On March 23, 2001, the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau released an order extending the *Further Notice of Proposed Rulemaking* reply comment period in ET Docket No. 98-206 from