

agency may issue a regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or the agency consults with tribal officials early in the process of developing the proposed regulation. This action will not significantly affect any Indian tribes. As indicated above, North Dakota is not authorized to implement its pretreatment program in Indian country. The EPA will continue to administer the existing Industrial Pretreatment program in Indian country in North Dakota.

I. *Executive Order 13132—Federalism*: Executive Order 13132, entitled “Federalism,” dated August 10, 1999 (64 FR 43255), requires the EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” The phrase “policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.” This action does not have federalism implications. It will not have any substantial direct effects on the States, on the relationship between States and the national government, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. It will merely put in place a State regulatory program that is identical to the existing federal program.

J. *Executive Order 13211—Energy Effects*: Because it is not a “significant regulatory action” under Executive Order 12866, this action is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001).

Dated: March 19, 2004.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 04–6928 Filed 3–26–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WC Docket No. 04–36; FCC 04–28]

Review of Regulatory Requirements for IP-Enabled Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on issues relating to services and applications utilizing Internet Protocol (IP), collectively referred to here as “IP-enabled services.” These services include, but are not limited to, voice over IP (VoIP) services, other communications capabilities utilizing the Internet Protocol, software-based applications that facilitate use of those services, and future services using IP expected to emerge in the market. As customers begin to substitute IP-enabled services for traditional communications, the Commission seeks comment as to the rate and extent of that substitution. Further, comments are requested on IP-enabled services presently available, expected future development of such services, how to distinguish among such services, and what regulatory requirements, if any, should apply to IP-enabled services.

This NPRM seeks comment on ways in which the Commission might categorize IP-enabled services to ensure that any regulations applied are limited to those services and/or applications for which they are most appropriate. In particular, comments are requested on whether the services comprising each category constitute “telecommunications services” or “information services” under the definitions set forth in the Act. Noting the importance of these legal classifications, as well as the Commission’s statutory forbearance authority and Title 1 ancillary jurisdiction, this NPRM describes several central regulatory requirements and asks which, if any, should apply to each category of IP-enabled service. These regulatory requirements include, among others, those addressing disability accessibility, the 911 and E911 systems, access charges, universal service, consumer protection, and traditional common carrier obligations.

DATES: Comments are due on or before May 28, 2004, and Reply Comments are due on or before June 28, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. See

SUPPLEMENTARY INFORMATION for further filing instructions.

FOR FURTHER INFORMATION CONTACT:

Russell Hanser, Senior Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0832, or at Russell.Hanser@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Notice of Proposed Rulemaking (NPRM)* in WC Docket No. 04–36, FCC 04–28, adopted February 12, 2004, and released March 10, 2004. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission’s duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at qualexint@aol.com. It is also available on the Commission’s Web site at <http://www.fcc.gov>.

Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies. All filings should refer to WC Docket No. 04–36. Comments filed through ECFS can be sent as an electronic file via the Internet at <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is WC Docket No. 04–36. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfshelp@fcc.gov, and should include the following words in the regarding line of the message: “get form<your e-mail address>.” A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. Parties filing by paper must also send five (5) courtesy copies to the attention of Janice M. Myles, Wireline Competition Bureau, Competition Policy Division, 445 12th Street, SW., Suite 5–C327, Washington, DC 20554, or via e-mail janice.myles@fcc.gov. Paper filings and courtesy copies must be delivered in the following manner. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience

delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings or courtesy copies for the Commission's Secretary and Commission staff will be accepted. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Each comment and reply comment must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

Synopsis of the Notice of Proposed Rulemaking

1. *Background.* IP is a protocol used to transmit data in a packetized format. Widespread common usage of IP-based applications has facilitated the proliferation of a great variety of services, including the world wide web, e-mail, file transfer, instant messaging, and virtual private networks, each of which can integrate audio, video and data functionality to provide capabilities beyond those traditionally available via the public circuit-switched network. Moreover, IP-enabled services provide consumers with opportunities for customization beyond those offered by circuit-switched voice services, including virtual telephone numbers, unified messaging, and call management. Finally, these services generally may transit wireline, wireless, cable, or other broadband facilities, promoting inter-platform competition.

2. Several carriers transport voice calls over their backbone IP networks, and recently consumers—in both the residential and enterprise markets—have more widely begun to substitute IP-enabled services and applications for traditional circuit-switched network voice calls. Cable providers and traditional wireline carriers have deployed or announced plans to deploy IP-enabled voice services to consumers. Consumers have also begun to use peer-to-peer IP-enabled voice applications to facilitate direct communication over their existing broadband facilities.

3. The prospect that IP-enabled services might come to be used as substitutes for the public circuit-switched network requires that the Commission examine the extent, if any, to which regulations currently applied to circuit-switched telephony should also be applied to any class of IP-enabled service. However, the Commission's examination must also recognize that these IP-enabled services differ in critical ways from traditional telephony, and that these differences may have important consequences for the Commission's decisions.

4. *Categorizing IP Enabled Services.* The Commission seeks comment on how, if at all, it should distinguish among IP-enabled services, and requests comment on several potential grounds for categorization, including (among others) the degree to which a service is functionally equivalent to traditional telephony; the degree to which a service is viewed as a substitute for traditional telephony; and whether a service interconnects with the PSTN and/or uses traditional telephone numbers. The Commission also asks commenters to propose any appropriate ground for categorization not specified in the NPRM.

5. *Jurisdictional Considerations.* The NPRM seeks comment on the jurisdictional nature of IP-enabled services. The Commission recently concluded that Pulver.com's Free World Dialup (FWD) service is an unregulated information service subject to Federal jurisdiction, and that it would in any event be inappropriate to apply the Commission's traditional end-to-end jurisdictional analysis to FWD. The Commission seeks comment on whether these conclusions also apply to other classes of IP-enabled services. Additionally, comment is sought on other grounds for Federal jurisdiction over IP-enabled services. Finally, the NPRM seeks comment on whether there is any ground for asserting exclusive Federal jurisdiction over all or some IP-enabled services, including but not limited to the Supremacy Clause or

Commerce Clause of the U.S. Constitution, section 253 of the Communications Act, or section 332 of the Communications Act.

6. *Appropriate Legal and Regulatory Framework.* The NPRM seeks comment on which IP-enabled services (if any) should be classified as telecommunications services, which (if any) should be classified as information services, and the effect, if any, of recent judicial decisions on the Commission's discretion to make such classifications. Comments are also requested regarding how the Commission should achieve important Federal policy goals, including whether it should use its ancillary jurisdiction for those IP-enabled services classified as information services or its forbearance authority for those services classified as telecommunications services. The Commission encourages specific, pragmatic proposals that will account for the technical, economic and other features that differentiate IP-enabled services from other services. Finally, the Commission seeks comment on the relevance of certain existing rules in the context of IP-enabled services and on what constraints there may be on the Commission's authority to revisit its existing interpretation of the statutory terms "telecommunications service" and "information service."

7. *Specific Regulatory Requirements: 911/E911.* The Commission seeks comment on the current capabilities of VoIP services to deliver traditional callback and location information. Additionally, comments are requested on means by which IP-enabled services can be used to improve current 911 and E911 services. Finally, the Commission seeks comment on whether any existing IP-enabled services satisfy the criteria established by the Commission to determine whether a service should be subject to some form of 911/E911 regulation and whether those criteria form the appropriate bases for determining whether IP-enabled services should be subject to those requirements.

8. *Specific Regulatory Requirements: Disability Access.* The NPRM invites comment regarding how the Act's requirements concerning the accessibility of communications equipment and services to the disabled should be applied in the context of IP-enabled services. Commenters are invited to refresh the record compiled in the context of a previous Notice of Inquiry concerning the applicability of section 255 to IP telephony. Finally, the NPRM seeks comment regarding how migration to IP-enabled services will affect the Commission's statutory

obligation to ensure that interstate and intrastate telecommunications relay services are available to hearing-impaired and speech-impaired individuals.

9. *Specific Regulatory Requirements: Carrier Compensation.* Comments are invited on the extent to which access charges should apply to VoIP or other IP-enabled services.

10. *Specific Regulatory Requirements: Universal Service.* The NPRM seeks comment on how the regulatory classification of IP-enabled services, including VoIP, would affect the Commission's ability to fund universal service. Several related issues have been raised previously in other Commission proceedings, and parties are encouraged to incorporate into this docket any relevant prior filings. In this proceeding, commenters are invited to address obligations and entitlements of both facilities-based and non-facilities-based providers of IP-enabled services.

11. *Specific Regulatory Requirements: Title III.* To the extent that providers of IP-enabled services use wireless technology to deliver such services, they may fall within the ambit of Title III of the Act, which provides the structure for the Commission's regulation of spectrum-based services, including broadcasting and all other services that use radio waves. Section 332 of the Act provides a specific framework for Commercial Mobile Radio Service (CMRS) providers. Given the Commission's previous history of forbearance from application of economic regulation to CMRS providers, the NPRM seeks comment on the impact of Section 332 on IP-enabled services offered by CMRS providers, and what other effect Title III may have on the provision or regulation of IP-enabled services provided in whole or in part over a wireless platform. In addition, comments are requested as to whether the Commission should distinguish among wireless providers of IP-enabled services based on the nature of their spectrum use (e.g. fixed mobile, licensed/unlicensed).

12. *Specific Regulatory Requirements: Title VI.* Often, IP-enabled services are provided over cable facilities. The Commission seeks comment on what impact, if any, the provision of broadband over cable plant should have on its treatment of IP-enabled services, as well as any effect that Title VI of the Act might have on any potential regulation of cable-based IP-enabled services. If the Commission classifies IP-enabled services as telecommunications services, should it forbear from applying certain Title II provisions to cable providers offering IP-enabled services,

and what would be the basis for such forbearance? The NPRM also asks whether any class of IP-enabled service should be construed to be a "cable service" under the Act.

13. *Specific Regulatory Requirements: Other Requirements.* The Commission also seeks comment on a number of other provisions in the Act, including consumer protection requirements and economic regulations set forth in Title II of the Act and in previous Commission orders.

14. *Other Considerations.* The NPRM invites comment on the implications of decisions in this docket for rural carriers, which generally face high operating expenses and equipment costs and rely on intrastate access charges for revenues. Comments are also requested on potential implications for international issues including settlement rates, the ability of consumers to use their IP CPE overseas to send and receive calls, and foreign policy or trade concerns. Additionally, comments are invited regarding the effect of IP-enabled services on numbering resources. The NPRM also requests comment regarding other policy objectives, including the interest in maintaining an open network architecture. Finally, the NPRM seeks comment regarding the availability of enforcement mechanisms to address disputes between IP-enabled service providers and their customers and between or among two or more providers.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this NPRM. See 5 U.S.C. 603, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104-121, 110 Stat. 857 (1996). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a).

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

This NPRM examines issues relating to services and applications making use of Internet Protocol (IP), including but

not limited to voice over IP (VoIP) services (collectively, "IP-enabled services"). IP-enabled "services" could include the digital communications capabilities of increasingly higher speeds, which use a number of transmission network technologies, and which generally have in common the use of the Internet Protocol. Some of these may be highly managed to support specific communications functions. IP-enabled "applications" could include capabilities based in higher-level software that can be invoked by the customer or on the customer's behalf to provide functions that make use of communications services. The NPRM states that the Commission must examine what its role should be in this new environment of increased consumer choice and power, and asks whether it can best meet its role of safeguarding the public interest by continuing its established policy of minimal regulation of the Internet and the services provided over it.

To assist the Commission in its analysis of how properly to treat IP-enabled services, the NPRM seeks comment on ways in which the Commission might distinguish among such services, and on what regulatory treatment, if any, would be appropriate for different classes of service. The NPRM then requests comment on whether the services comprising each category constitute "telecommunications services" or "information services" under the definitions set forth in the Act. Finally, recognizing the central importance of these legal classifications but also highlighting the Commission's statutory forbearance authority and Title I ancillary jurisdiction, the NPRM describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, the 911 and E911 systems, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.

2. Legal Basis

The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and 154(j), and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216, of the Commission's rules, 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. 5 U.S.C. 603(b)(3), 604(a)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. This present NPRM might, in theory, reach a variety of industries; out of an abundance of caution, we have attempted to cast a wide net in describing categories of potentially affected small entities. We would appreciate any comment on the extent to which the various entities might be affected by our action.

Small Businesses. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

Small Organizations. Nationwide, there are approximately 1.6 million small organizations.

Small Governmental Jurisdictions. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

a. Telecommunications Service Entities

(i) **Wireline Carriers and Service Providers.** The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have nevertheless included small incumbent local exchange carriers in this RFA analysis, although we

emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), 1,032 incumbent LECs would be deemed small.

Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers." Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), 458 CLECs or CAPs would be deemed small businesses. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees.

Local Resellers. Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 127 local resellers would be deemed small businesses.

Toll Resellers. Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 590 toll resellers would be deemed small businesses.

Payphone Service Providers (PSPs). Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 757 PSPs would be deemed to be small businesses.

Interexchange Carriers (IXCs). Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 223 interexchange carriers would be deemed to be small businesses.

Operator Service Providers (OSPs). Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 22 OSP would be deemed small businesses.

Prepaid Calling Card Providers. Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 36 prepaid

calling card providers would be deemed small businesses.

800 and 800-Like Service Subscribers. Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

(ii) **International Service Providers.** The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 million or less in average annual receipts. For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year. Census data for 1997 shows that 273 Satellite Telecommunications firms had annual receipts of under \$10 million. The second category—Other Telecommunications—includes "establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." According to Census Bureau data for 1997, 424 firms had annual receipts of \$5 million to \$9,999,999.

(iii) **Wireless Telecommunications Service Providers.** Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. Census Bureau data for 1997 show that 1,303 paging firms had employment of 999 or fewer employees, and an additional 17 paging firms had employment of 1,000 employees or more. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.

Cellular Licensees. According to the most recent Commission data, 719 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio

(SMR) Telephony services, which are placed together in the data. Under the SBA standard that businesses with 1500 or fewer employees are deemed small, we have estimated that 294 of these are small, under the SBA's small business size standard.

Common Carrier Paging. For the census category of Paging, Census Bureau data for 1997 show that 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Under the SBA's small business size standard, we estimate that the majority of these businesses are small.

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

Wireless Telephony. Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. Under the SBA's small business size standard, we estimate that 294 wireless telephony carriers are small.

Broadband Personal Communications Service. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. 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." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards, bid successfully for licenses in Blocks A and B. There were 90 winning bidders

that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35, and 29 successful bidders qualified as "small" or "very small" businesses.

Narrowband Personal Communications Services. For purposes of two past auctions of narrowband personal communications services (PCS) licenses, "small businesses" were defined as entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.

220 MHz Radio Service—Phase I Licensees. According to the Census Bureau data for 1997, only 12 wireless firms out of a total of 1,238 such firms that operated for the entire year, had 1,000 or more employees. Consequently, under the SBA's small business standard, we estimate that a very small minority of such firms are small.

220 MHz Radio Service—Phase II Licensees. Phase II 220 MHz service is a new service, and is subject to spectrum auctions. For purposes of the auctions, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals,

has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. After two auctions of these Phase II licenses, fourteen winning companies that claimed small business status won 158 licenses.

800 MHz and 900 MHz Specialized Mobile Radio Licenses. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands.

700 MHz Guard Band Licensees. In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Five of the winning bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. One winning bidder was a small business and won a total of two licenses.

Rural Radiotelephone Service. Under the SBA's small business standard, the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service.

Air-Ground Radiotelephone Service. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under the SBA's small business standard, we estimate that almost all of them qualify as small.

Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. Under the SBA's small business standard, we estimate that there are up to approximately 712,000 licensees that are held by small businesses or individuals. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

Fixed Microwave Services. Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard.

Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that

would qualify as small under the SBA's small business size standard.

39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video

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

218–219 MHz Service. The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.

24 GHz—Incumbent Licensees. According to Census Bureau data for 1997, there were 977 licensees that operated for the entire year. Of this total, 965 firms employed 999 or fewer employees, and an additional 12 firms employed 1,000 employees or more. Thus, under the SBA's standard for small businesses, the great majority of firms can be considered small.

24 GHz—Future Licensees. With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size

standards. These size standards will apply to any future auctions, if held.

b. Cable and OVS Operators

Cable and Other Program Distribution. This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million.

Cable System Operators (Rate Regulation Standard). Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

Open Video Services. Open Video Service (OVS) systems provide subscription services. The SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission estimates that up to 24 OVS operators might qualify as small businesses that may be affected by the rules and policies adopted herein.

c. Internet Service Providers

Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

d. Other Internet-Related Entities

Web Search Portals. We note that, in this NPRM, we have described activities such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the census bureau has identified firms that "operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users." The SBA has developed a small business size standard for this category; that size standard is \$6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under \$5 million, and an additional nine firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

Data Processing, Hosting, and Related Services. Entities in this category "primarily * * * provid[e] infrastructure for hosting or data processing services." The SBA has developed a small business size standard for this category; that size standard is \$21 million or less in average annual receipts. According to Census Bureau data for 1997, there were

3,700 firms in this category that operated for the entire year. Of these, 3,477 had annual receipts of under \$10 million, and an additional 108 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

All Other Information Services. "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." We note that, in this NPRM, we have described activities such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under \$5 million, and an additional nine firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

Internet Publishing and Broadcasting. "This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast." The SBA has developed a small business size standard for this new (2002) census category; that size standard is 500 or fewer employees. To assess the prevalence of small entities in this category, we will use 1997 Census Bureau data for a relevant, now-superseded census category, "All Other Information Services." The SBA small business size standard for that prior category was \$6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in the prior category that operated for the entire year. Of these, 172 had annual receipts of under \$5 million, and an additional nine firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

Software Publishers. These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of

specific users. The SBA has developed a small business size standard of \$21 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. For Software Publishers, Census Bureau data for 1997 indicate that there were 8,188 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts under \$10 million, and an additional 289 firms had receipts of between \$10 million and \$24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 19,334 firms that operated for the entire year. Of these, 18,786 had annual receipts of under \$10 million, and an additional 352 firms had receipts of between \$10 million and \$24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 5,524 firms that operated for the entire year. Of these, 5,484 had annual receipts of under \$10 million, and an additional 28 firms had receipts of between \$10 million and \$24,999,999.

Equipment Manufacturers. In this NPRM, we invite comment on whether the disability access provisions of sections 255 and 252(a)(2) of the Act, as well as the Commission's Rules implementing these statutes in the *Disability Access Order*, apply in the context of VoIP and other IP-enabled services. Section V.B.1 notes that sections 255 and 252(a)(2) and the Commission's implementing rules apply to manufacturers of equipment that the Act and the rules deem covered by the provisions. The Commission currently does not collect data regarding how many, or which, companies manufacture such equipment. Thus, out of an abundance of caution, we have perhaps been over-inclusive in creating the following list of possibly covered entities. Again, commenters are invited to comment on these categories and on the possible number of small entities within these categories.

Wireless Communications Equipment Manufacturers. The SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Examples of products in this category include "transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment" and may include other devices that transmit and receive IP-enabled services, such as personal

digital assistants (PDAs). Under the SBA size standard, firms are considered small if they have 750 or fewer employees. According to Census Bureau data for 1997, there were 1,215 establishments in this category that operated for the entire year. Of those, there were 1,150 that employed fewer than 500 employees, and an additional 37 that employed 500 to 999 employees. The percentage of wireless equipment manufacturers in this category was approximately 61.35%, so we estimate that the number of wireless equipment manufacturers with employment of under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

Telephone Apparatus Manufacturing. This category "comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment." Examples of pertinent products are "central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, and data communications equipment, such as bridges, routers, and gateways." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 598 establishments in this category that operated for the entire year. Of these, 574 had employment of under 1,000, and an additional 17 establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

Electronic Computer Manufacturing. This category "comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 563 establishments in this category that operated for the entire year. Of these, 544 had employment of under 1,000, and an additional 11 establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

Computer Terminal Manufacturing. "Computer terminals are input/output

devices that connect with a central computer for processing." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 142 establishments in this category that operated for the entire year, and all of the establishments had employment of under 1,000. Consequently, we estimate that the majority or all of these establishments are small entities that may be affected by our action.

Other Computer Peripheral Equipment Manufacturing. Examples of peripheral equipment in this category include keyboards, mouse devices, monitors, and scanners. The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 1,061 establishments in this category that operated for the entire year. Of these, 1,046 had employment of under 1,000, and an additional six establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

Fiber Optic Cable Manufacturing. These establishments manufacture "insulated fiber-optic cable from purchased fiber-optic strand." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 38 establishments in this category that operated for the entire year. Of these, 37 had employment of under 1,000, and one establishment had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

Other Communication and Energy Wire Manufacturing. These establishments manufacture "insulated wire and cable of nonferrous metals from purchased wire." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 275 establishments in this category that operated for the entire year. Of these, 271 had employment of under 1,000, and four establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority or all of these establishments are small entities that may be affected by our action.

Audio and Video Equipment Manufacturing. These establishments manufacture “electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data for 1997, there were 554 establishments in this category that operated for the entire year. Of these, 542 had employment of under 500, and nine establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

Electron Tube Manufacturing. These establishments are “primarily engaged in manufacturing electron tubes and parts (except glass blanks).” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data for 1997, there were 158 establishments in this category that operated for the entire year. Of these, 148 had employment of under 500, and three establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

Bare Printed Circuit Board Manufacturing. These establishments are “primarily engaged in manufacturing bare (*i.e.*, rigid or flexible) printed circuit boards without mounted electronic components.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,389 establishments in this category that operated for the entire year. Of these, 1,369 had employment of under 500, and 16 establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

Semiconductor and Related Device Manufacturing. These establishments manufacture “computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,082 establishments in this category

that operated for the entire year. Of these, 987 had employment of under 500, and 52 establishments had employment of 500 to 999.

Electronic Capacitor Manufacturing. These establishments manufacture “electronic fixed and variable capacitors and condensers.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 128 establishments in this category that operated for the entire year. Of these, 121 had employment of under 500, and four establishments had employment of 500 to 999.

Electronic Resistor Manufacturing. These establishments manufacture “electronic resistors, such as fixed and variable resistors, resistor networks, thermistors, and varistors.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 118 establishments in this category that operated for the entire year. Of these, 113 had employment of under 500, and 5 establishments had employment of 500 to 999.

Electronic Coil, Transformer, and Other Inductor Manufacturing. These establishments manufacture “electronic inductors, such as coils and transformers.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 448 establishments in this category that operated for the entire year. Of these, 446 had employment of under 500, and two establishments had employment of 500 to 999.

Electronic Connector Manufacturing. These establishments manufacture “electronic connectors, such as coaxial, cylindrical, rack and panel, pin and sleeve, printed circuit and fiber optic.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 347 establishments in this category that operated for the entire year. Of these, 332 had employment of under 500, and 12 establishments had employment of 500 to 999.

Printed Circuit Assembly (Electronic Assembly) Manufacturing. These are establishments “primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards.” The SBA has developed a small business size

standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 714 establishments in this category that operated for the entire year. Of these, 673 had employment of under 500, and 24 establishments had employment of 500 to 999.

Other Electronic Component Manufacturing. These are establishments “primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,835 establishments in this category that operated for the entire year. Of these, 1,814 had employment of under 500, and 18 establishments had employment of 500 to 999.

Computer Storage Device Manufacturing. These establishments manufacture “computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 209 establishments in this category that operated for the entire year. Of these, 197 had employment of under 500, and eight establishments had employment of 500 to 999.

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

None at this time.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (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 NPRM expressly states that the Commission may ultimately need to

differentiate among various IP-enabled services, and that regulation may be deemed inappropriate with regard to most, if not all, IP-enabled services, applications or providers. It thus seeks comment on the appropriate grounds on which to differentiate among providers of IP-enabled services. The NPRM further seeks comment on the appropriate legal classification for each category of IP-enabled services, and on which regulatory requirements, if any, should be applied to services falling into each category. The NPRM makes no conclusions regarding which regulations, if any, would apply to any entity, including small entities. We seek comment here on the effect various proposals will have on small entities, and on the effect alternative rules would have on those entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

15. Pursuant to the authority contained in sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), this *Notice of Proposed Rulemaking* is adopted.

16. That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall* send a copy of this *Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04-6944 Filed 3-26-04; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04-608; MB Docket No. 04-67; RM-10856]

Radio Broadcasting Services; Easthampton and Pittsfield, MA, and Malta, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Vox New York, LLC, licensee of Station WNYQ(FM) ("WNYQ"), Malta, New York, and Great Northern Radio, LLC, licensee of Station WBEC-FM, Pittsfield, Massachusetts. The licensees

propose to upgrade Channel 289A, Station WNYQ, to Channel 289B1 and to reallocate Channel 288A, Station WBEC-FM, from Pittsfield to Easthampton, Massachusetts. The reallocation of Channel 288A to Easthampton will provide Easthampton with its first local aural transmission service. The coordinates for requested Channel 289B1 at Malta, New York, are 42-58-17 NL and 73-40-52 WL, with a site restriction of 9.1 kilometers (5.7 miles) east of Malta. The coordinates for requested Channel 288A at Easthampton, Massachusetts, are 42-18-52 NL and 72-41-18 WL, with a site restriction of 5.5 kilometers (3.4 miles) north of Easthampton.

Petitioners' proposal complies with the provisions of Sections 1.420(g)(3) and (i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 289B1 at Malta, New York, or Channel 288A at Easthampton, Massachusetts, or require the licensees to demonstrate the availability of additional equivalent class channels for use by other parties.

DATES: Comments must be filed on or before May 3, 2004, and reply comments on or before May 18, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David G. O'Neil, Esq., Rini Coran, PC; 1501 M Street, NW., Suite 500; Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04-67, adopted March 10, 2004, and released March 12, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

The 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* contacts.

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, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Easthampton, Channel 288A, and removing Channel 288A at Pittsfield.

3. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 289B1 and removing Channel 289A at Malta.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04-6943 Filed 3-26-04; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 99-5891; Notice 02]

RIN 2127-AH14

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates a rulemaking proceeding concerning a petition for rulemaking from Kathleen Weber of the University of Michigan Child Passenger Protection Research Program in Ann Arbor, Michigan. The