

service will not be on the Procurement List unless the Committee adds it as prescribed in Part 51-2 of this chapter. If another Government entity moves into the old location, the service at that location will remain on the Procurement List to meet the needs of the new Government entity.

PART 51-8—PUBLIC AVAILABILITY OF AGENCY MATERIALS

6. The authority citation for Part 51-8 continues to read as follows:

Authority: 5 U.S.C. 552.

§§ 51-8.4 and 51-8.5 [Amended]

7. Remove the words "Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461" and add, in their place, the words "Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302" in the following places:

- a. Section 51-8.4; and
- b. Section 51-8.5(a).

PART 51-9—PRIVACY ACT RULES

8. The authority citation for Part 51-9 continues to read as follows:

Authority: 5 U.S.C. 552a.

§§ 51-9.401 and 51-9.405 [Amended]

9. Remove the words "Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461" and add, in their place, the words "Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302" in the following places:

- a. Section 51-9.401(a); and
- b. Section 51-9.405(a).

PART 51-10—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

10. The authority citation for Part 51-10 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 51-10.170 [Amended]

11. In § 51-10.170, remove the words "Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461" and add, in their place, the words "Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302" in paragraph (c).

Dated: March 31, 1998.

Beverly L. Milkman,
Executive Director.

[FR Doc. 98-8778 Filed 4-2-98; 8:45 am]

BILLING CODE 6353-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95-155; FCC 98-48]

Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 30, 1998, the Commission released a Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 95-155 adopting an assignment method for toll free vanity numbers. The Fourth Report and Order is intended to ensure the efficient, orderly, and fair allocation of toll free numbers.

EFFECTIVE DATE: April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Robin Smolen, Network Services Division, Common Carrier Bureau, (202) 418-2320.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Fourth Report and Order in CC Docket No. 95-155, In the Matter of Toll Free Service Access Codes, FCC 98-48, adopted March 27, 1998, and released March 30, 1998. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 1231 20th St., N.W., Washington, D.C. 20036, phone (202) 857-3800.

Analysis of Proceeding

1. In the *Fourth Report and Order* in CC Docket No. 95-155, the Commission resolves how vanity numbers should be assigned. The Commission delegated authority to the Common Carrier Bureau to resolve those issues necessary for the assignment of the 888 set-aside vanity numbers and implementation of 877, including conservation plans, if needed, on any or all toll free codes in use to prevent exhaust of toll free numbers before deployment of the next toll free code. The Commission concludes that vanity numbers in the 877 toll free code, and toll free codes beyond 877, shall be released and made available on a first-come, first-served basis as each toll free

code is deployed. The Commission further concludes that a right of first refusal shall be offered to current 800 subscribers holding 800 vanity numbers that correspond to the 888 vanity numbers that were initially set aside. If the 800 subscriber refrains from exercising its option to reserve the corresponding 888 vanity number, that number shall be released and made available on a first-come, first-served basis. The 888 set-aside numbers are to be made available for assignment 90 days after the 877 code is deployed.

2. With respect to this *Fourth Report and Order*, a Final Regulatory Flexibility Analysis is contained in the Attachment.

3. It is ordered, pursuant to sections 1, 4(i), 201-205, 18, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201-205, 218, and 251, that the Fourth Report and Order in CC Docket 95-155 is hereby adopted.

4. It is further ordered, pursuant to section 5(c)(1) of the Communications Act, as amended, 47 U.S.C. 155(c)(1), and § 0.201(d) of the Commission's rules, 47 CFR 0.201(d), that authority is delegated to the Chief, Common Carrier Bureau to resolve those issues necessary for the assignment of the 888 set-aside vanity numbers and implementation of 877, including conservation plans, if needed on any or all toll free codes in use to prevent exhaust of toll free numbers before deployment of the next toll free code.

5. It is further ordered that all policies, rules, and requirements of this document are effective April 3, 1998.

List of Subjects

47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Part 52 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 52—NUMBERING

1. The authority citation for part 52 continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201-05, 207-09, 218, 225-7, 271 and 332 unless otherwise noted.

2. Add § 52.111 to subpart D to read as follows:

§ 52.111 Toll Free Number Assignment.

Toll free numbers shall be made available on a first-come, first-served basis unless otherwise directed by the Commission.

Note: This attachment will not appear in the Code of Federal Regulations.

Attachment—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Toll Free Service Access Codes, Notice of Proposed Rulemaking ("Notice"). The Commission sought written public comment on the proposals in the Notice, including comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") in this Fourth Report and Order ("Order") conforms to the RFA.

2. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our statements made in preceding sections of this Fourth Report and Order, the statements set forth in those preceding sections shall be controlling.

Need for, and Objectives of, the Order

3. The Commission, pursuant Sections 1, 4(i), 201–205, 218, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 218, and 251, adopts this Fourth Report and Order to ensure the efficient, fair, and orderly allocation of toll free numbers.

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

4. In the Notice, the Commission included an IRFA of the possible impact on small entities of the proposals suggested in the Notice. The Commission noted that the proposals set forth in the Notice may have a significant economic impact on a substantial number of small entities, because toll free numbers are essential to many businesses both in terms of marketing and advertising products. Further, the Commission noted that toll free numbers may also have an intrinsic value to many businesses. The Commission sought written public comments on the IRFA. Although no comments were submitted in direct response to the IRFA, the Commission has addressed the issues raised in the general comments that pertain to small entities, and has considered the possible economic impact on small entities.

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

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 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. 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"). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. *Small governmental jurisdiction* generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulates that may be affected by the proposed rules, if adopted.

6. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service ("TRS"). According to data in the most recent report, there are 3,459 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service,

providers of telephone exchange service, and resellers.

7. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

8. Although some affected incumbent local exchange carriers ("ILECs") may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."

1. Responsible Organizations

9. This Order applies to all Responsible Organizations ("RespOrgs"), which may be small business entities. Any entity that meets certain eligibility criteria may serve as a RespOrg. Neither the Commission nor the SBA has developed a definition of small entities that would apply specifically to RespOrgs. The most reliable source of information regarding the number of RespOrgs appears to be data collected by Database Service Management, Inc. ("DSMI"), the organization that administers the toll free allotment database. According to a May 8, 1996, report obtained from DSMI, 168 companies reported that they were RespOrgs. Although it seems certain that some of these RespOrgs are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of RespOrgs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 168 small entity RespOrgs that may be affected by

the decisions adopted in this Fourth Report and Order.

2. Toll Free Subscribers

10. This Order also applies to all toll free subscribers, which also may be small business entities. "As noted and discussed supra, the RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." We note here that toll free subscribers may include entities from all three of these categories of small entities." Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to toll free subscribers. The most reliable source of information regarding the number of 800 subscribers of which we are aware appears to be the data we collect on the 800 numbers in use. According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. Similarly, the most reliable source of information regarding the number of 888 subscribers appears to be the data we collect on the 888 numbers in use. According to our most recent data, as of March 23, 1998, a total of 6,115,550 888 numbers were in use. Although it seems certain that some of these subscribers either are not independently owned and operated businesses, or do not have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers and fewer than 6,115,550 888 subscribers that may be affected by the decisions adopted in this Fourth Report and Order.

3. Telephone and Wireless Entities

11. *Total Number of Telephone Companies Affected.* The provisions adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497

telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the decisions adopted in this Fourth Report and Order.

12. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than 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 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 ILECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions adopted in this Fourth Report and Order.

13. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services ("LECs"). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 1,371 carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, 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

LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

14. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services ("IXCs"). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 143 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the proposed rules, if adopted.

15. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers ("CAPs"). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 109 carriers reported that they were engaged in the provision of competitive access services. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the proposed rules, if adopted.

16. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent

Telecommunications Industry Revenue data, 27 carriers reported that they were engaged in the provision of operator services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition.

Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by the proposed rules, if adopted.

17. 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 Telecommunications Industry Revenue data, 441 carriers reported that they were engaged in the provision of pay telephone services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by the proposed rules, if adopted.

18. Resellers (including debit card providers). Neither the

Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 339 reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

19. Wireless (Radiotelephone) Carriers. SBA has developed a

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

20. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service ("PCS") services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate

that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

21. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

22. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies, and the most recent Telecommunications Industry Revenue data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services. Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

23. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

24. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The decisions adopted in this Fourth Report and Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues no more than \$15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions adopted in this Fourth Report and Order.

25. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the decisions adopted in this Fourth Report and Order includes these 60 small entities. In the recently concluded 800 MHz SMR auction there were 524 licenses awarded to winning bidders, of which 38 were won by small or very small entities. We assume that all 38 may be affected by the decisions adopted in this Fourth Report and Order.

4. Cable System Operators (SIC 4841)

26. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than \$11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.

27. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions adopted in this Fourth Report and Order.

28. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one 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 has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator

serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

29. In this Fourth Report and Order, we adopt a requirement that DSMI release vanity numbers in the 877 toll free code and in toll free codes beyond 877 at the same time as each code is deployed, to be made available on a first-come, first-served basis. In addition, we adopt a requirement that RespOrgs assign the 888 vanity numbers that were initially set aside, to their 800 customers holding the corresponding 800 vanity number, provided these 800 subscribers exercise an option to reserve the 888 set-aside number. Finally, we adopt a requirement that DSMI release the 888 set-aside vanity numbers, to be made available on a first-come, first-served basis if the 800 subscriber chooses to refrain from exercising its option to reserve the number. We conclude that these requirements are consistent with our obligation under section 251(e) of the Act to ensure that numbers are made available on an equitable basis. We believe that these requirements will not unduly burden DSMI because the act of releasing numbers is part of DSMI's responsibility as administrator of the toll free database and will not require any additional recordkeeping. Furthermore, these requirements will reduce DSMI's burden by no longer requiring DSMI to ensure that these numbers remain unavailable. We also believe that these requirements will not unduly burden RespOrgs, including small business entities, because the act of assigning numbers to subscribers and releasing numbers to the spare pool is part of RespOrgs' responsibilities as managers of toll free subscribers' database records. We further believe that these requirements will not unduly burden subscribers, including small business entities, because the subscribers may

decline to exercise the option. If however, the subscriber chooses to exercise the option, the necessary steps involved in reserving these numbers do not exceed the necessary steps involved in reserving any other toll free numbers. We anticipate that no new skills are necessary to comply with this requirement, and that no additional staff or other resources should be necessary to comply with this requirement. Furthermore, we adopt no new reporting or recordkeeping requirements for toll free subscribers, including small business entities.

Significant Alternatives and Steps Taken by Agency To Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

30. As stated, we conclude that releasing vanity numbers in the 877 code and codes beyond 877 as each code is deployed to be made available on a first-come, first-served basis, is consistent with our obligation under section 251(e) of the Act to ensure that numbers are made available on an equitable basis. This conclusion is in the public interest, and will not have an adverse impact on toll free subscribers, including small business entities, because it will open the toll free market to all toll free subscribers on an equal basis. Small toll free subscribers will be affected in the same manner as non-small business entities. We also conclude that allowing current 800 subscribers a right of first refusal to the corresponding 888 vanity numbers initially set aside is consistent with our obligation under Section 251(e) of the Act to ensure that numbers are made available on an equitable basis. This conclusion is also in the public interest, and will not have an adverse impact on toll free subscribers, including small business entities, because all toll free subscribers, including small business entities, with an 800 number corresponding to an 888 set-aside number will have a right of first refusal.

31. We considered providing a right of first refusal to subscribers that expressed interest in replicating their toll free numbers beyond the 888 toll free code. We declined to accept various proposals associated with a right of first refusal for future codes. We concluded that such a requirement would have conflicted with our goal to allocate toll free numbers efficiently, fairly, and on an orderly basis. We found that a right

of first refusal for future codes would have been discriminatory against new subscribers because it would have precluded them from obtaining certain desirable numbers. If incumbent subscribers were allowed to exercise a right of first refusal in future codes, they would have a decided advantage over entities by precluding them from obtaining these numbers to represent their businesses. The entities that would be placed at a disadvantage by such an approach would probably have included small business entities. New business entities are often small, and the new entities would have been the entities precluded from obtaining those desirable vanity numbers. By allowing a right of first refusal for the 888 set-aside only, new subscribers, including small business entities, will have the opportunity to reserve desirable numbers in 877 and codes beyond 877.

32. We also considered providing a right of first refusal with a fee. We declined to accept various proposals associated with a fee-based right of first refusal. We concluded that such a requirement would not solve the problems associated with discriminatory access to toll free numbers. In addition, such a requirement could place an undue financial burden on small business entities that may not have the financial resources to comply with such a fee requirement.

33. We also considered imposing a Standard Industrial Classification ("SIC") code requirement. Under this option, an incumbent toll free subscriber with commercial concerns related to assignment of the corresponding vanity number in a subsequent toll free code would have reported its code to its toll free service provider or RespOrg, that in turn would have reported the code to DSMI. DSMI would have incorporated this SIC code into the subscriber's record and queried the database when applicants requested a corresponding number in another code to determine if their SIC code is the same as the current holder of the corresponding number in the previous toll free code. If the two parties shared the same SIC code and were, therefore, considered competitors, the applicant for the new number would have been prohibited from obtaining that number. We concluded that this option is inconsistent with our goal to allocate toll free numbers on an efficient, fair, and orderly basis. We determined that

such a requirement would be administratively burdensome, difficult to apply because of a rapidly changing market, and subject to manipulation. Moreover, as with a right of first refusal, this option would have provided incumbent subscribers with a decided advantage over entities in the same line of business by precluding them from obtaining certain desirable numbers. The entities that would have been placed at a disadvantage by such an approach would have probably included small business entities. New business entities are often small, and the new entities would have been the entities precluded from obtaining those 888 numbers.

34. The Office of Advocacy, U.S. Small Business Administration ("SBA"), filed a Written Ex Parte Presentation on March 17, 1998 requesting a delay in the opening of the 877 toll free code until the Commission has resolved the issue of vanity-number treatment and has analyzed alternatives that can ease the burden on small entities.

This Fourth Report and Order addresses the issue of vanity-number assignment and in doing so considers the effects on small businesses. Furthermore, delaying 877 deployment would have adverse consequences on new RespOrgs planning their businesses around the April 5, 1998 date. New business entities are often small, and these entities would have been placed at a disadvantage by delaying 877 deployment.

Report to Congress

35. The Commission will send a copy of the Toll Free Service Access Codes, Fourth Report and Order, including this Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Toll Free Service Access Codes, Fourth Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Toll Free Service Access Codes, Fourth Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

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