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**FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Part 22****[CC Docket No. 94-102; FCC 99-96]****Compatibility of Wireless Services  
With Enhanced 911****AGENCY:** Federal Communications  
Commission.**ACTION:** Final rule

**SUMMARY:** This document creates rules that will improve the ability of cellular phone users to complete wireless 911 calls. The action is taken to improve the security and safety of analog cellular users, especially in rural and suburban areas. The primary goal of this action is to ensure that reliable, effective 911 and E911 service is available to wireless users by approving three mechanisms any of which will result in more wireless 911 calls being completed than occurs today. This document contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for an emergency review under PRA. The general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

**DATES:** Effective July 28, 1999. This document contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA), which are pending OMB approval. A notice will be placed in the **Federal Register** when OMB approval for these information collections is received. Written comments by the public and by other Government agencies on the information collections are due August 27, 1999.

**ADDRESSES:** Comments on the information collections should be submitted to Les Smith, Federal Communications Commission, Room 1A-804, 445 12th Street, S.W., Washington DC 20554, or via the Internet at lesmith@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, S.W., Washington, DC 20503, or via the Internet to fain\_t@al.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** Won Kim or Dan Grosh, Policy Division, Wireless Telecommunications Bureau,

at (202) 428-1310. For additional information concerning the information collection aspects contained in the document, contact Les Smith, Federal Communications Commission, Room 1A-804, 445 12th Street, S.W., Washington DC 20554, or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Second Report and Order (Second R&O) in CC Docket NO. 94-102, FCC 99-96, adopted May 13, 1999, and released June 9, 1999. The complete text of this Second R&O is available for the inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, D.C. 20054, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857-3800. CY-B400, 445 12th Street, S.W., Washington, D.C. 20054.

**Synopsis of the Second Report and Order**

1. In this Second R&O, the Commission approves three approaches to facilitate the completion of more wireless 911 calls. The Commission believes that the action taken in the Second R&O will have a significant positive impact on the security and safety of analog cellular subscribers, especially in rural and suburban areas, and result in the successful completion of significantly more wireless calls to 911 than occurs today. Thus the Commission is responding to a public need for confidence that wireless calls to 911 will in fact go through.

2. Specifically, the Second R&O requires that analog cellular phones include a separate capability for processing 911 calls that permits those calls to be handled, where necessary, by either cellular carrier in the area. This separate capability is intended to improve 911 reliability, increase the probability that 911 calls will be efficiently and successfully transmitted to public safety agencies, and help ensure that wireless service will be maintained for the duration of the 911 calls. The rule applies to new handsets manufactured more than nine months after the adoption date of the Second R&O. The Second R&O also sets out guidelines for 911 call completion methods that satisfy the Commission's rule, approving three methods that have been proposed in this proceeding, (1) Automatic A/B Roaming-Intelligent Retry (IR), (2) Adequate/Strongest Signal, and (3) Selective Retry.

3. While the actions taken in the Second R&O should represent an important improvement in completing 911 calls, especially in areas where cellular coverage is less complete, it is also important to recognize the problems and limits that remain in completing 911 calls. The full text of the Second R&O thus addresses the comparative advantages and disadvantages of the three approved methods and notes that the present limits of technology deprive the Commission of the opportunity to craft perfect solutions. Each of the approved methods, while improving the current situation regarding 911 call completion, is subject to some disadvantages in certain situations. Moreover, the new rule only applies to new analog cellular handsets, not to existing handsets or to digital services such as Personal Communications Service (PCS) or Enhanced Specialized Radio (ESMR).

4. The origin of the Second R&O may be found in the Second Notice of Proposed Rulemaking (Second NPRM) in this proceeding (61 FR 40374, August 2, 1996) which sought ways to enable mobile users to complete 911 calls without regard to the availability of the system or technology used by their wireless service in the area in which they seek to place the call. The Second NPRM sought comment on one proposal in this area and also sought comment on any other ways to enable wireless telephone users to complete 911 calls wherever a mobile system providing 911 service is present.

5. One reason access to emergency 911 systems is not always available for wireless handsets is that there are gaps in the signal coverage provided by wireless carriers. A wireless telephone user who happens to be located in a coverage gap or "blank spot" where his or her carrier's signal is inadequate may find that it is not possible to establish and maintain adequate communications over the wireless system accessed by the handset. Moreover, if the preferred carrier provides a weak or inadequate signal in response to analog cellular 911 calls, the handset may nonetheless lock onto that carrier even if sustained voice communications between the handset and the preferred carrier's system is not possible.

6. One option for improving 911 call completion is to initially program handsets to a calling mode termed A over B, B over A (A/B, B/A) default

approach. The A/B, B/A approach would switch all analog cellular calls—including 911 calls—to the customer's preferred carrier if a usable channel is available. If a channel is not available, the handset would automatically switch to a usable channel on the other cellular carrier's system. As an initial measure to improve accessibility to all services by wireless users, the Commission supports this A/B, B/A default setting as a voluntary industry practice. Setting the default in this way does, however, permit the handset to place calls with non-preferred carriers, and in the case of ordinary calls, this could result in unexpected and unwanted roaming charges. The industry program to educate users should inform customers of the possibility of a roaming charge so that they can decide whether to make such calls. This program might include information in the handset manuals and in materials provided to the customer at the time of activation that will help users understand the operation of the handset and the charges that will apply, including possible roaming charges. Customers will have the option of setting a different default if they prefer.

7. While useful, the A/B, B/A default approach, standing alone, is of limited value because all calls, including regular calls, will be switched to the other carrier. Non-emergency calls make up the vast majority of calls, so consumers will face substantial incentives to reprogram their handsets back to A only, B only, or some other mode that best meets their needs for non-emergency calls. To the extent that they do so, the benefits of the A/B approach 911 calls will vanish. This operational mode is also subject to lock-in problems. These limitations could reduce the availability of the A/B, B/A mode substantially.

8. The Second R&O, in order to address some of these problems, concludes that 911 call completion for cellular phones operating in the analog mode should be further enhanced by requiring that handset include separate programming for 911 calls. By providing cellular phone users with a program for 911 calls separate from that used for their other calls, the Commission will equip each user with an operational mode, or possibly a choice of modes, that will best enhance 911 calls. This will enable users to select both the calling mode that is likely to be most reliable and effective for them in emergencies and a different mode, if they prefer, for ordinary calls.

9. Three 911-only call processing modes have been proposed in this proceeding. Two of these, Automatic A/B Roaming-IR and Adequate/Strongest

Signal, are based on earlier proposals, but have been modified significantly to address concerns raised in the record. Selective Retry was proposed as another method to address such concerns. Although the Commission recognizes that each approach has certain limitations that are pertinent to our objective of maximizing 911 call completions, it also believes that each of three proposals represents a substantial improvement toward meeting this objective. The Commission has also concluded, moreover, that each approach offers benefits under certain circumstances, as compared to the *status quo*, and may also suit different user preferences. Finally, the Commission believes that each of the three call processing modes may also provide a foundation for future improvements in 911 call Completion, reflecting actual operating experience, innovation, or adaptation to technologies other than analog cellular.

10. The Commission, based on analysis of the record, believes that any reasonable analog cellular 911 call processing mode should satisfy certain basic principles. First, the most basic goal is to improve the 911 call completion rate so far as practicable, including in circumstances where the caller's preferred carrier is unable to complete a call that can be completed by another carrier. Second, it is often desirable to complete 911 calls, where possible, via the preferred cellular carrier. This routing minimizes delay in setting up the call and encourages competition among carriers in the most effective provision of 911 service, including E911 features.

11. Third, a 911 call processing mode should not disrupt overall operation of 911 service, including the networks of both wireless carriers and public safety organization. Fourth, the 911 call processing mode should address the lock-in problem in a reasonable and effective way that substantially reduces or eliminates the likelihood that a 911 call might be locked in on the system of a cellular carrier that is unable to provide a usable voice communications channel. And, fifth, the benefits of the calling mode to public safety should outweigh any additional costs. These principles represent general criteria for evaluating 911 call processing modes. In this Second R&O, the Commission applies them to evaluate the three 911-only modes that have been presented in the record. In doing so, the Commission notes that it is not our intent to limit the development and improvement of 911 call completion modes, so long as they meet the criteria established. The Commission wishes to encourage the

development of new and improved methods of making wireless technology enhance public safety.

12. The first approved method for 911-only call processing is Automatic A/B Roaming-IR. With this mode, when a consumer dials 911 the handset would seek to complete the call with the consumer's preferred carrier, if possible. If the handset fails to receive a signal, the handset would attempt to complete the call to the non-preferred carrier and would continue to rescan and reattempt the call until it is completed, the user terminates the call, or the handset loses power. The Commission believes that, in most respects, it should improve 911 call completion and satisfy the criteria as detailed in the Second R&O.

13. The Second R&O does, however, express concerns regarding Automatic A/B Roaming-IR. One significant disadvantage involves the length of set-up times. For most 911 calls, which would be completed via the preferred carrier, the call set-up time should be no longer than for any other call. However, the IR approach could lengthen set-up for calls not completed via the preferred carrier, in some cases by many seconds. The Commission is concerned that long delays in set-up time may induce callers in an emergency situation to sign off before the process has had adequate time to run, even if the call could have been completed with the non-preferred carrier. Because the same call completion algorithm would be implemented for each new call attempt, callers might be repeatedly frustrated if they mistakenly interpreted the long set-up time as an indication that the call had failed. Even if the caller persevered, any lengthy delay in completing emergency calls would also delay the dispatch of help.

14. Based on the record, the Second R&O requires that Automatic A/B Roaming-IR meet two conditions to address delays in set-up times. First, the handset must provide effective feedback to inform the user when 911 call processing is underway and has not finished. This could take the form of an audible tone or message in addition to a visual status report on the handset's screen. Second, the IR algorithm should be such that, in any case, the handset would not spend more than a reasonable amount of time seeking to complete the call with the preferred carrier before reattempting the call with the other cellular carrier. The Second R&O, to minimize the possibility that delays in processing 911 calls will lead callers to terminate 911 calls that eventually would have been completed, placed a time limit of 17 seconds from the time the call is sent for the handset to either

complete the call to the preferred carrier or seek to complete the call to the non-preferred carrier. The feedback information should reassure callers that they should continue waiting for this amount of time, so that abandonment of 911 calls that could have been completed should very infrequent or nonexistent. Handset manufacturers may elect to set an even briefer period to further minimize 911 call set-up delays.

15. The Second R&O notes that Automatic A/B Roaming-IR is currently under review by an industry standards body, Telecommunications Industry Association (TIA). The Second R&O asks that TIA, as part of this review, consider whether and to what extent the 17 second time limit might be further reduced in order to further minimize call set-up delays and lock-in. The Commission also encourages wireless carriers and mobile phone manufacturers to be active in addressing this request so that future revisions to industry cellular standards and generations of mobile phones provide for further reductions in call set-up delays for 911 calls where feasible. The Commission looks forward to receiving the results of TIA's review and will continue monitoring TIA's progress with respect to these issues. In the meantime, the Second R&O finds that Automatic A/B Roaming-IR, as conditioned in the Second R&O meets the Commission's basic objectives and will serve to improve the *status quo* regarding 911 call completion, and thus improves this method as one means of complying with the Commission's 911 call completion rules.

16. The second approved approach is the Adequate/Strongest signal. The initial proposal provided that the handset would scan for all available lines and select the carrier with the strongest control channel signal. Further, strongest signal capability would be required for all new analog cellular phones and would be enabled as the default setting, but could easily be disabled by consumers choosing to do so. In response to the initial proposal, the public safety community and the wireless industry raised concerns that strongest signal would have unintended and adverse consequences. In response to these concerns, a revised Adequate/Strongest Signal proposal was submitted stating that analog 911 calls would be routed to the preferred carrier if that carrier provides an "adequate" channel of communication as measured in the handset by its forward control channel signal strength. The Second R&O adopts a definition of adequate control channel

signal as one with a strength of at least -85 dBm. If the preferred carrier does not have an adequate signal, then the call would be routed to whichever analog carrier had the strongest forwarding control channel signal.

17. The Second R&O recognizes that Adequate/Strongest Signal is not a perfect or ultimate solution to 911 call completion problems,<sup>1</sup> but finds that overall, it will substantially improve 911 call completion and otherwise satisfies the Commission's criteria for an acceptable 911 call completion mode. In particular, the Second R&O concludes that Adequate/Strongest Signal is likely to improve 911 call completion in rural and suburban areas for portable phones. Accordingly, the Second R&O approves its use by handset manufacturers as one method of complying with the Commission's Rules.

18. The final approach approved by the Second R&O is Selective Retry, which employs a separate 911 button on the handset to route 911 calls. This is an option that could also be adopted with other 911 calling modes. This method initially uses the A/B, B/A program, which routes calls to the preferred carrier unless that carrier provides no signal, in which case the call would be routed to the other cellular carrier. What Selective Retry adds is the ability for a caller to route a call to the other carrier by pressing the 911 button if and when the caller judges this to be necessary. Use of Selective Retry could occur both during call set-up and after a caller is in conversation. At a minimum, the Commission believes that it should be made available as a third 911 call set-up procedure manufacturers can incorporate in handsets.

19. The Second R&O recognizes that handsets with 911 buttons may seem vulnerable to accidental, false alarm calls. The Commission believes that, once alerted to this problem, handset manufacturers will be able to design 911 buttons that are much less vulnerable to accidental dialing. To the extent that effective designs are put in service, users will no longer need to program a speed dial button to 911, which should help reduce accidental dialing of 911. While the Second R&O does not adopt specific requirements for 911 buttons, the Commission encourages manufacturers to consider and address this issue in their designs. If necessary,

<sup>1</sup> Several commenters suggested various disadvantages they found in an Adequate/Strongest Signal approach to 911 call completion problems. These disadvantages and the Commission's decision to approve Adequate/Strongest Signal as a mode of complying with the 911 call completion rules are discussed in the full text of the Second R&O in paragraphs 43-68.

the Commission is prepared to adopt specific rules to reduce accidental 911 calls, in order to assist the public safety organizations which must process such calls.

20. The Commission finds no reason why dual-mode and multi-mode handsets when operating in the analog mode cannot and should not be subject to the same 911 call completion principles and rules as analog-only handsets. The analog functions of these handsets are subject to the same standards and rules and the Commission believes that should continue to be the case in this critical public safety area. The Second R&O thus adopts the same rule and schedule for all handsets that operate in the analog cellular modes, including dual-mode and multi-mode handsets when they are operating in the analog cellular mode. Dual and multi-mode handsets may operate in a digital mode in routing 911 calls, but when the handset operates in analog mode, it should do so in compliance with the rules the Commission adopted in the Second R&O.

21. The Second R&O, to allow a reasonable time for cellular handset manufacturers to comply with these requirements to implement a separate 911 call menu that includes an approved 911 call completion mode, establishes a deadline nine months from the adoption date of this Second R&O. The Commission believes that this nine month period will allow carriers and PSAPs sufficient time to plan for changes in 911 calling patterns and make any other needed adjustments.

22. The Commission will implement this rule through an equipment manufacturing requirement and through the Commission's equipment authorization process. As of the date nine months from the adoption date of this Second R&O, any mobile unit manufactured with analog cellular capability will be expected to incorporate at least one of the three approved 911 call processing mode. Any application for equipment authorization of an analog cellular telephone submitted six months after the adoption date of this Second R&O must include a statement and a description of the approved 911 call processing method used by the device. The Commission will consider the incorporation of modifications to existing authorized equipment to Class I permissive changes that do not require a filing with the Commission.

### Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act, (RFA),<sup>2</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking in this proceeding. The Commission sought written public comments on the proposals in the Second NPRM, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Second Report and Order (Second R&O) conforms to the RFA.<sup>3</sup>

### I. Need for and Objectives of Action

24. The Second NPRM in this proceeding raised several issues of importance to improving E911 service. One issue in the Second NPRM considered proposals to help improve the transmission of 911 calls, particularly in geographic areas where a wireless 911 call could be delayed by "blank spots" where the system's radio signal is very weak or non-existent. A petition filed by the Ad Hoc Alliance for Public Access, proposing that the Commission require that all 911 calls be sent to the cellular system with the strongest control channel signal, was put out for comment at that time. The Commission sought comment on the Alliance's proposal and, more broadly, on ways to enable mobile users to complete 911 calls without regard to the geographic availability of the system or technology used by their wireless service. The Second R&O is needed to resolve these issues raised in the Second NPRM and is intended as an additional step toward improving both basic and enhance 911 wireless services and to ensure that critical 911 wireless service is offered in the most efficient, dependable way technologically feasible.

### II. Summary of Significant Issues Raised by the Public Comments in Response to Initial Regulatory Flexibility Statement

25. No comments were submitted in direct response to the Initial Regulatory Flexibility Act. However, the Commission made every effort to gather as much data as possible on the issues considered in the Second R&O, and general comments received in response to the Second NPRM established an extensive record on which the decisions reached in the Second R&O were based.

<sup>2</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847(1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>3</sup> See 5 U.S.C. 604.

The Commission does not believe that a large number of manufacturers affected by the actions adopted in the Second R&O would be considered small businesses as defined by the Small Business Administration.

### III. Description and Estimate of Small Entities Subject to the Rules

26. To estimate the number of small entities that may be affected by the possible significant economic impact of our present action, we first consider the definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>4</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>5</sup> 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).<sup>6</sup>

27. *Cellular Equipment Manufacturers.* The actions taken in the Second R&O will chiefly apply to manufacturers of cellular equipment offering analog services or digital equipment also offering analog services. The Commission does not know how many cellular equipment manufacturers are in the current market, or how many equipment manufacturers are developing dual-mode handsets that can operate as an analog as well as a digital set. The 1994 County Business Patterns Report of the Bureau of the Census estimates that there are 920 companies that make communications subscriber equipment. This category includes not only cellular equipment manufacturers, but television and AM/FM radio manufacturers as well. Thus the number of cellular equipment manufacturers is considerably lower than 920, and the number of cellular manufacturers producing equipment that can be used in analog mode is lower than that. Under SBA regulations, a "communications equipment manufacturer," which includes not only U.S. cellular equipment manufacturers

<sup>4</sup> *Id.* 601(6).

<sup>5</sup> *Id.* 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>6</sup> Small Business Act, 15 U.S.C. 632.

but also firms that manufacture radio and television broadcasting and other communications equipment, must have a total of 750 or fewer employees in order to qualify as a small business concern. Census Bureau data from 1992 indicate that at that time there were an estimated 858 such U.S. manufacturers and that 778 (91%) of these firms had 750 or fewer employees and would therefore be classified as small entities.<sup>7</sup> Using our current estimate of cellular equipment manufacturers and the previous percentage estimate of small entities, we estimate that our current action may affect approximately 837 small cellular equipment manufacturers.

28. *Cellular Carriers.* Cellular carriers are also impacted by the Commission's decision in this proceeding. The Commission has also not developed a definition of small entities applicable to cellular licensees. Again, the definition of small entity is the definition under the SBA rules this time applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>8</sup>

29. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 804 companies reported that they are engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 804 small entity Cellular Service Carriers that might be affected by the actions taken in this Second R&O.

### IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

30. The Second R&O adopts a rule requiring that analog cellular phone, manufactured more than nine months after the adoption date of the Order, include a separate capability for

<sup>7</sup> U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC code 3663 (estimate created by the Census Bureau under contract to the Office of Advocacy, SBA).

<sup>8</sup> 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

processing 911 calls that permits those calls to be handled, where necessary, by either cellular carrier in the area. The Second R&O also sets out guidelines for 911 call completion methods that satisfy our rule, approving three methods that have been proposed in the record, Automatic A/B Roaming-Intelligent Retry, Adequate/Strongest Signal, and Selective Retry. Any one of the three may be used. Alternative methods may be used to satisfy the Commission's Rules, provided that Commission approval is received for the alternative method. In this way, the Commission hopes to keep abreast of changing technology and alter its 911 rules whenever necessary to optimize the benefits of technology. Implementation of the rule will be achieved through an equipment manufacturing requirement and the Commission's equipment authorization process. The Second R&O also requires that any application for equipment authorization of an analog cellular telephone submitted six months after the adoption date of the Second R&O must include a statement and a description of the approved 911 call processing method used by the device.

31. Finally, the Second R&O suggests a voluntary program to educate users of analog phones with regard to capabilities of the A/B, B/A logic for 911 calls. The voluntary industry education program should also inform the users of the possibility that setting A/B, B/A as the default for analog handset could produce roaming charges.

#### **V. Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives**

32. Three 911-only call processing modes were proposed in this proceeding. Two of these, Automatic A/B Roaming-Intelligent Retry (IR) and Adequate/Strongest Signal have been modified significantly to address concerns raised in the record. For example, to avoid critical delays in transmission time under the Automatic A/B Roaming-IR proposal, the Second R&O establishes time limits for providing customer feedback that 911 call processing is underway but not completed. The handset should seek to complete the call with the non-preferred cellular carrier if the preferred cellular carrier has not successfully deliver the call to the landline carrier within 17 seconds after the call is placed. To reduce the possibility of consumers abandoning their 911 calls, the Second R&O indicates that the feedback information should advise callers to continue waiting for this amount of time. The Commission could have

adopted a mandatory program to educate users of analog phones with regard to capabilities of the A/B, B/A logic for 911 calls, but instead made this provision voluntary.

33. Also, the Commission considered specific requirements for 911 buttons to avoid accidental dialing of 911, but declined to take regulatory action and encouraged manufacturers to consider and address this issue in their designs.

34. One commenter proposed that if the Commission adopted both Adequate/Signal and Automatic A/B Roaming-IR, that handset manufacturers be required to offer both choices in each handset. The Commission denied this proposal, finding such a requirement unwarranted and costly. The Second R&O, while not barring manufacturers from electing to incorporate more than one calling mode, or some combination of modes, indicates that implementation of any one of the approved 911 calling modes would improve 911 call completion.

35. Another commenter proposed a six month deadline for compliance with these regulations to implement a separate 911 call menu that includes an approved 911 call completion mode. The Second R&O adopted a nine month deadline to provide enough time for product and standards development or for thorough testing.

36. Finally, while approving the three 911 call completion modes, A/B Roaming-Intelligent Retry, Adequate Strongest Signal, and Selective Retry, the Second R&O also provided that carriers may incorporate a new or modified 911 call processing mode provided that they submit such requests to the Commission for approval.

#### **Authority**

37. This action is taken pursuant to sections 1, 4(i), 201, 303, 309, and 332 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 201, 303, 309, 332.

#### **Ordering Clauses**

38. Accordingly, *it is ordered* that part 22 of the Commission's Rules is amended as set forth in this Second R&O.

39. *It is further ordered* that the rule amendments made by this Second R&O shall become effective July 28, 1999.

40. *It is further ordered* that authority is delegated to the Wireless Telecommunications Bureau to consider and approve, deny, or approve with modifications new or revised 911 call processing modes.

41. *It is further ordered* that, the Commission's Office of Public Affairs,

Reference Operations Division, shall send a copy of this Second Report and Order, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96-354, 94 Stat., 5 U.S.C. 601-612 (1980).

#### **Paperwork Reduction Act**

The Second R&O contains a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and Agency comments are due on or before August 27, 1999. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

#### **List of Subjects in 47 CFR Part 22**

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

**Shirley S. Suggs,**

*Chief, Publications Branch.*

#### **Rule Changes**

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 22—PUBLIC MOBILE SERVICES**

1. The authority citation for part 22 continues to read as follows:

**Authority:** 47 U.S.C. 154, 222, 303, 309, and 332.

2. New § 22.921 is added to read as follows:

#### **§ 22.921 911 Call Processing Procedures; 911-Only Calling Mode.**

All mobile phones manufactured after February 13, 2000, and capable of operating in an analog mode, *i.e.*, in compliance with "Cellular System Mobile Station—Land Station Compatibility Specification" (April 1981 Ed.) Office of Engineering and Technology Bulletin No. 53, referenced in § 22.933 must incorporate a special

procedure for processing "9-1-1" calls. Such procedure must recognize when a "9-1-1" call is made and, at such time, must override any programming in the mobile unit that determines the handling of a non-911 call and permit the call to be handled by other analog carriers. This special procedure must incorporate any one or more of the 9-1-1 call system selection processes endorsed or approved by the Commission.

[FR Doc. 99-16484 Filed 6-25-99; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Parts 23 and 26

[Docket OST-97-2550]

RIN 2105-AB92

### Participation by Disadvantaged Business Enterprises in Department of Transportation Programs

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** In its final disadvantaged business enterprise (DBE) rule, the Department intended to ensure the confidentiality of personal financial information submitted to recipients by owners of DBE firms. The Department inadvertently omitted the regulatory text language on this point. This correction document remedies this omission. In addition, this document corrects minor omissions concerning the threshold for Federal Transit Administration recipients to establish DBE programs and a requirement for transit vehicle manufacturers to have DBE programs, removes a potentially confusing word from the rule's provisions concerning DOT review of recipients' overall goals, clarifies language concerning the certification and personal net worth of airport concessionaires and others, and clarifies that a lease is viewed as a contract for purposes of the rule.

**DATES:** This rule is effective June 28, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366-9306 (voice), (202) 366-9313 (fax), (202) 755-7687 (TDD), bob.ashby@ost.dot.gov (email).

## SUPPLEMENTARY INFORMATION:

### Privacy

In discussing the requirement of the DBE final rule that owners of DBE firms submit a statement of personal net worth, with supporting documentation, the Department addressed commenters' concerns about the confidentiality of the information. The preamble to the rule said the following:

One of the primary concerns of DBE firms commenting about submitting personal financial information is ensuring that the information remains confidential. In response to this concern, the rule explicitly requires that this material be kept confidential. It may be provided to a third party only with the written consent of the individual to whom the information pertains. This provision is specifically intended to preempt any contrary application of state or local law (e.g., a state freedom of information act that might be interpreted to require a state transportation agency to provide to a requesting party the personal income tax return of a DBE applicant who had provided the return as supporting documentation for his PNW statement). There is one exception to this confidentiality requirement. If there is a certification appeal in which the economic disadvantage of an individual is at issue (e.g., the recipient has determined that he or she is not economically disadvantaged and the individual seeks DOT review of the decision), the personal financial information would have to be provided to DOT as part of the administrative record. The Department would treat the information as confidential. (64 FR 5117; February 2, 1999).

Unfortunately, through editorial error on the Department's part, the regulatory text provision referred to was omitted from the final rule. We regret any confusion that this omission may have caused, and we are correcting the error by inserting the language in a new paragraph (a)(2)(iii) of § 26.67 of the rule.

### FTA Requirements for DBE Programs

In § 26.21(a)(2) of the rule, the Department states that FTA recipients who receive more than \$250,000 in various forms of FTA assistance must have a DBE program. The phrase "exclusive of transit vehicle purchases" was inadvertently omitted from this paragraph. This omission has raised questions from some recipients, and we are reinserting the omitted language to avoid confusion. In addition, this provision did not make explicit that transit vehicle manufacturers must have DBE programs, so we are adding language to make this clear.

### Review of Overall Goals

While operating administrations review recipients' overall goal submissions, recipients are not required to obtain prior concurrence by operating administrations with their overall goals (see § 26.45(f)(4)).

However, as the result of an editorial oversight, § 26.21(b)(1) of the rule makes a reference to overall goals being "approved" by operating administrations. Because prior concurrence is not required, this reference is incorrect and could be misleading. Therefore, we are removing it.

### Concessionaires

In the February 2, 1999, final DBE rule, the Department removed all of former part 23 except the portion concerning airport concessionaires. The airport concession provisions were modified for consistency with the new 49 CFR part 26. In one respect, however, the amendment of the airport concessions provision failed to delete language concerning certification procedures that referred to the (now deleted) certification provisions of former part 23. While we have provided guidance to airports that they should follow part 26 procedures, we believe it would be useful to delete the language referring to former part 23's procedures. Therefore, this rule eliminates two paragraphs in § 23.95. Recipients should follow part 26 certification procedures for concessionaires as well as for other contractors.

Airports have expressed concern that the rule is unclear concerning the application to concessionaires of the \$750,000 personal net worth (PNW) cap and PNW statement requirements of § 26.67. The Department is currently working to complete a final rule concerning airport concessions. The PNW cap applicable to concessionaires is one of the matters being considered in this rulemaking. The PNW cap amount that the Department applies to concessionaires may or may not be \$750,000. Pending completion of the final rule on airport concessions, the Department believes it best to resolve the current uncertainty by making the \$750,000 cap amount and PNW statement requirement of § 26.67 inapplicable to airport concessionaires.

We are amending § 26.67(a)(2)(i) to specify that disadvantaged owners of airport concessionaires are not required to submit PNW statements. Consequently, the rebuttal of the presumption of economic disadvantage based on a PNW statement an individual is required to submit (see § 26.67(b)(1)) also does not apply to airport concessionaires.

### Definition of "Contract"

The 49 CFR part 23 definition of "contract" specified that a lease was