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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 97-207; FCC 99-137]

Calling Party Pays Service Offering in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks to remove regulatory obstacles to the offering to consumers of Calling Party Pays (CPP) services by Commercial Mobile Radio Services (CMRS) providers. CPP allows a CMRS provider to make available to its subscribers an offering whereby the party placing the call to a CMRS subscriber pays at least some of the charges associated with terminating the call, including most prominently charges for the CMRS airtime. The Commission is issuing this document to help facilitate the wider availability of CPP, and to consider possible actions this Commission could take to address several key issues associated with the offering of CPP service.

DATES: Comments are due on or before August 18, 1999, and reply comments are due on or before September 8, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Legal Information: David Siehl, 202-418-1310; Economic Information: Joseph Levin, 202-418-1310; [TTY: 202-418-7233].

SUPPLEMENTARY INFORMATION: The following synopsis concerns only the Notice of Proposed Rulemaking (NPRM) of the Commission's Declaratory Ruling and Notice of Proposed Rulemaking in WT Docket No. 97-207, FCC 99-137, adopted June 10, 1999, and released July 7, 1999. The synopsis of the section of the document containing the Declaratory Ruling is being published separately in the **Federal Register**. The complete text of the entire released document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Courtyard level), 445 12th

Street, S.W., Washington, D.C. 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857-3800, 445 12th Street, S.W., CY-B400, Washington, D.C. 20054.

Synopsis of Notice of Proposed Rulemaking

1. The Commission is initiating this NPRM for two fundamental reasons. First, the availability of CPP as a service offering for wireless telephone subscribers has the potential to expand wireless market penetration and minutes of use and, in so doing, offers an opportunity to provide a near-term competitive alternative to incumbent local exchange carriers (ILECs) for residential customers. Second, the Commission believes that there may be obstacles to the widespread introduction of CPP, and that market forces alone may not eliminate these obstacles.

2. The Commission finds that CPP could provide several important tangible benefits to telecommunications consumers in the United States. One major benefit envisioned is the possibility that CPP could ultimately lead to wireless services becoming a true competitive alternative to the local exchange services offered by ILECs, particularly for residential customers. Another potential benefit is that CPP could spur competition within the CMRS market by offering consumers a different and less expensive wireless service option.

3. Many carrier commenters have argued that subscribership to wireless services would be expected to increase substantially because, in no longer paying for incoming calls, consumers would have a much more, valuable service, even at current prices. Independent market analysts have indicated that CPP would make prepaid wireless services, a critically important and growing segment of the CMRS market, more attractive to consumers by eliminating airtime charges for incoming calls. Because prepaid wireless telephone service is attracting many new wireless customers from socioeconomic groups that have not previously subscribed to wireless service, the broad availability of a prepaid option, in which the subscriber pays only to make calls, would reinforce the trend to much greater wireless penetration.

4. Many industry analysts and commentators anticipate that CPP is the catalyst needed to create a significant increase in wireless usage by U.S. subscribers. First, CMRS subscribers

who select CPP would be much more likely to leave their wireless phones in an activated mode in order to receive calls because they would not be responsible for paying the associated charges. Also, because CPP customers would be expected to be more willing to give out their wireless phone numbers if they did not have to pay for incoming calls, they would be much more likely to receive incoming calls. As a result, it is likely that more calling parties will place calls to wireless subscribers and take advantage of the opportunity to reach someone who is not tied to one location. The calling party will have an increased likelihood of being able to complete a call to a CPP subscriber, as compared to calling a wireless subscriber with called party pays service. Second, according to these analysts, to the extent that subscribers are comfortable with paying a set amount per month for wireless service, CPP will encourage them to increase the number of calls they make, up to the amount of their monthly CMRS budget, since they no longer will need to pay for, or budget for, incoming calls.

5. The Commission would like to update its record on the experience with CPP and the impacts of it on the use of mobile services in other countries. The NPRM seeks comment on any recent international developments, and in addition, on domestic competitive trends that may be relevant to a CPP service offering in the U.S.

6. In its Notice of Inquiry regarding CPP,¹ the Commission asked about possible obstacles to greater availability of this service option. In summary, the responses indicate three areas that need to be addressed: (1) technical standards to control leakage; (2) calling party notification to protect consumers; and (3) arrangements for reasonably priced billing and collection services. The technical standards to collect and pass information needed to bill the calling party for calls to a wireless phone are being developed by an industry group, based on a working paper developed through Cellular Telecommunications Industry Association (CTIA) and released in January 1998. There has been no indication in the comments that the Commission needs to intervene in this process.

7. The NPRM notes based on the record to this point, that it appears the lack of a nationwide notification has hindered successful CPP offerings in this country. The record strongly

¹ Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, Notice of Inquiry, 62 FR 58700 (Oct. 30, 1997), 12 FCC Rcd 17693 (1997) (Notice of Inquiry).

supports the conclusion that some effective form of calling party notification is critically important to avoid consumer confusion with CMRS provider introduction of CPP offerings. Further, the comments almost unanimously indicate that without a uniform notification system, conflicting state notifications would increase consumer confusion about calls to CPP subscribers if CPP were to be implemented more widely. Another consequence of conflicting notifications would be increased costs to wireless carriers in their efforts to provide notifications to calling parties in different jurisdictions. The Commission believes that it is essential to develop a uniform notification system, in cooperation with the states, and seeks comment on what elements that notification system should contain.

8. A threshold issue concerning notification is whether there should be a uniform nationwide standard that specifies the manner in which a CMRS carrier must indicate to a caller that the caller will be billed for his or her call to the CMRS phone or pager. A second issue is how to develop and implement such a notification standard, particularly how we may incorporate the knowledge and concerns of the states with regard to consumer notification and protection.

9. The Commission agrees with the commenters that a uniform nationwide notification system is necessary to facilitate the implementation of CPP. The NPRM finds that such a notification would significantly alleviate confusion on the part of calling parties by providing them the capability to make an informed decision on whether to proceed with completing the call. In addition, as several commenters submit, a uniform nationwide standard for notification announcement would likely minimize the cost to wireless carriers of providing a notification, especially where they service multi-state areas. The NPRM seeks comment on what additional consumer protection measures states could take that would be consistent with a uniform notification announcement and within the scope of their authority to protect consumers.

10. The NPRM concludes that the Commission has jurisdiction to implement a uniform nationwide notification under sections 201(b) and section 332(c)(3)(A) of the Act.² In addition, the Commission recognizes the traditional role of the states in the areas of consumer notification and protection. Indeed section 332(c)(3)(A)

provides that States may regulate "other terms and conditions" of any CMRS service.³

11. The Communications Act establishes as a primary mission of the Commission regulation of interstate and foreign communication so as to make available to all the people of the United States a rapid, efficient Nation-wide, and world-wide wire and radio communications service.⁴ The NPRM also notes that section 201(b) declares unlawful any unjust and unreasonable practices, which clearly governs CMRS calls that originate and terminate in different states.⁵ Based on its determination in the Declaratory Ruling that CPP is a form of CMRS, the Commission believes that it may have authority under section 332 of the Act to establish uniform rules in furtherance of our statutory mandate to "establish a federal regulatory framework to govern the offering of all [CMRS]."⁶ In the alternative, the NPRM seeks comment on other jurisdictional grounds for establishing a nationwide system for CPP notification, and on the extent to which the Commission should prohibit inconsistent or conflicting state notification regulations.⁷

12. The Commission further recognizes, however, as the record reflects, that the states have a legitimate interest, pursuant to the "other terms and conditions" exception provided by section 332(c)(3)(A),⁸ to regulate matters concerning aspects of consumer protection involved, e.g., in customer billing practices.⁹

13. The Commission believes that a process should be initiated that considers the role and interest of the states in consumer protection. The NPRM invites comment on how the Commission might tailor a nationwide notification system that would provide the states a way, consistent with statutory authority, to protect intrastate interests in a manner that would not conflict with the nationwide benefits of

³ See 47 U.S.C. 332(c)(3)(A); see also *House Report* at 261 (explaining that other "terms and conditions" of CMRS include such matters as customer billing information and practices, billing disputes and "other consumer protection matters.").

⁴ 47 U.S.C. 151.

⁵ 47 U.S.C. 201(b).

⁶ H.R. Conf. Rep. No. 103-213 at 490 (1993). See CITA Comments to NOI at 20, n. 42 (referring to this report in arguing for a nationwide notification, and also, referring to the Senate version, Sec. 402(13)).

⁷ For example, CITA contends that "the Commission retains jurisdiction to ensure that inconsistent State regulation does not thwart uniformity of nationwide CPP notification mechanisms." See CITA Comments at NOI at 17-18 n.37 (citing *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986)).

⁸ See 47 U.S.C. 332(C)(3)(A).

⁹ See *House Report* at 261.

a uniform notification system for CPP. The NPRM directs the Wireless Telecommunication Bureau to work actively with the states, through the National Association of Regulatory Utility Commissioners (NARUC), as well as with interested wireless industry and consumer representatives, to seek to develop a consensus implementation of our calling party notification proposal.

14. The Commission seeks to ensure calling party notification that protects all consumers, including those with disabilities, that reflects the knowledge and experience of the states, and that can be implemented on a cost-effective basis.

15. The NPRM proposes that the calling party notification for CPP should consist of a verbal message provided by the CMRS provider to the calling party. Because CPP will represent a significant change to consumers calling a wireless telephone or pager, the Commission believes that initially it is important that notification include the following elements:

(1) Notice that the calling party is making a call to a wireless phone subscriber that has chosen the CPP option, and that the calling party therefore will be responsible for payment of airtime charges.

(2) Identification of the CMRS provider.

(3) The per minute rate, or other rates, that the caller will be charged by the CMRS provider.

(4) An opportunity to terminate the call prior to incurring any charges.

16. Although the Commission acknowledges that specific rate information may be superfluous in certain situations, the Commission tentatively concludes that rate information would be considered relevant by a substantial majority of calling parties. The rate information would have to include all of the additional charges billed by the CMRS provider to the calling party for the call. For example the Commission understands that CPP offerings envisioned by CMRS providers would include per minute charges for terminating airtime. It is possible that a CMRS providers may also include other charges now paid by the CMRS subscriber receiving the call, for instance, for roaming or for long-distance service. If so, the notification must include all of the per minute and other charges to be billed to the calling party. The NPRM seeks comment on this element in a proposed notification system.

17. The Commission seeks comment on the desirability of moving to a simpler, more streamlined notification

² 47 U.S.C. 201(b), 332(c)(3)(A).

system that would not include rate information, after consumers have become accustomed to CPP and are aware of the additional charges involved. The NPRM in addition seeks comment on whether our proposed method of notification, as well as the simpler version described above, will be accessible to people with disabilities. The NPRM also requests proposed solutions to any problems that are identified.

18. The NPRM also seeks comment on other options for ensuring that calling parties have adequate notification. There are a number of notification options being used in states, such as Arizona, where CPP is now being offered. Some carriers rely on 1+ dialing as the means to indicate to the caller that a toll is involved. Other options include the use of dedicated NXX¹⁰ codes for CPP subscribers and the use of special numbers with a 500 Service Area Code (SAC) to identify the number as a CPP call. The Commission seeks comment on what additional notification measures states might be able to adopt that would not conflict with uniform nationwide notification.

19. The Commission recognizes that businesses need to restrict the ability of telephone users to make various types of billable calls from certain lines (e.g., toll restricted lines on private branch exchanges (PBXs)). The NPRM asks for comment on the number of companies and other organizations that use PBXs or Centrex and could be adversely affected by the broader implementation of CPP, as well as projections of the magnitude of potential losses they might incur because of the inability to identify calls being placed from their systems to CPP subscribers.

20. The NPRM also seeks comment on the ways businesses and other organizations can meet the need for restricted access, particularly if the telecommunications industry moves to more widespread number portability. In light of the number portability, number pooling, and other signaling system based solutions, the NPRM seeks comments on the viability of signaling solutions, perhaps combined with line class codes.¹¹ Commenters should address the viability of proposed solutions and whether the solutions can be implemented with current network capabilities. The NPRM seeks comment on whether establishing service codes would sufficiently address these issues.

¹⁰ NXX is the three-digit number identifying the central office. See 47 CFR 52.7(c).

¹¹ A line class code is a code used at the PBX or Centrex switch to restrict a specific number within the PBX or Centrex system from making a particular type of call.

The Commission also seeks comment on the impact on business users, who use restricted access, if dedicated service codes were not established.

21. The NPRM seeks comment on the desirability of establishing a dedicated service code or codes to assign to CPP subscribers so that callers may more readily identify a CPP call. The NPRM also seeks comment on whether it is necessary or desirable to treat the notification for paging the same as mobile telephony. In particular, the use of a distinct code would appear to be unworkable in the context of the Source One approach to CPP. Therefore, the NPRM solicits comments that address the best ways of balancing the need for a uniform CPP notification approach using special numbering codes, with the need to work within the special operating constraints of paging carriers. Although such specially assigned telephone numbers could be used as the sole means of notifying consumers that they are calling a CPP number, the Commission tentatively concludes that if special numbers are to be established, they should serve to supplement the above notification system, not replace it. Comment is sought on this tentative conclusion. Finally, the NPRM seeks comment on the effect of calling party notification through assignment of numbering codes on number exhaust and number portability, and on possible means to mitigate any significant negative effects.

22. The NPRM finds that the Commission has jurisdiction to establish calling party notification through dedicated numbering codes pursuant to section 251(e)(1), which confers exclusive jurisdiction on the Commission over the North American Numbering Plan as it pertains to the United States, along with the power to delegate to the states certain portions of this jurisdiction.¹² The Notice of Inquiry record indicates that the Commission could rely on this provision if it were to implement a CPP notification scheme based on "1+dialing" or use of specialized area codes. The NPRM tentatively concludes that section 251 of the Act does provide a jurisdictional basis to implement such a method and seeks comment on this tentative conclusion.

23. The Commission notes that in a 1997 decision regarding "casual calling" it suggested that carriers have reasonable options other than tariffs to establish contractual relationships with

¹² Section 251(e)(1) states that "[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertains to the United States. * * *" 47 U.S.C. 251(e)(1).

casual callers that would legally obligate such callers to pay for their services, and that providing the caller the rates, terms, and conditions prior to the completion of a call would establish an enforceable contract between the caller and the carrier.¹³ The Commission believes that these same principles should apply in the context of CPP.

24. The NPRM seeks comment on whether the proposed notification method ought to be sufficient to establish an "implied in fact" contractual arrangement between the CMRS provider and the calling party, and, if not, what else may be necessary.

25. Furthermore, the NPRM urges commenters to discuss whether market conditions exist or are likely to develop in the United States that would exert competitive pressure on CPP rates to be charged a calling party by a CMRS carrier. Under this approach, the Commission would defer regulatory intervention until there is clear evidence that Commission action is necessary to resolve rate issues. In addition, the NPRM seeks comment on any other approaches that would help safeguard consumers who wish to place calls to CPP subscribers. In this regard, the NPRM notes that the Commission's Rules require that the rates charged for calls placed through TRS be no greater than the rates charged for a functionally equivalent call that does not use TRS facilities.¹⁴ The requests comment on whether methods are needed to ensure that the CPP rates charged for voice and TTY calls placed through TRS centers do not exceed those that do not use such facilities.

Relationship Between LEC Billing and Collection Services and CPP Offerings

26. The record contains a variety of views on the need for the Commission to mandate LEC billing and collection. On the other hand, some LECs and wireless carriers submit that there is no evidence yet of a strong market demand for CPP, and that the Commission should let the market operate. In considering the regulatory treatment of billing and collection services, the Commission observes that it has generally declined to regulate the provision of billing and collection services unless regulation is needed to protect competition. In 1983, shortly after the Modified Final Judgment, the Commission regulated billing and

¹³ See Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Order on Reconsideration, 62 FR 59583 (Nov. 4, 1997). 12 FCC Rcd 15014, 15026-27 n. 74 (para. 18) (1997).

¹⁴ Section 64.604(c)(3) of the Commission's Rules, 47 CFR 64.604(c)(3).

collection services by establishing a separate access charge for billing and collection provided to IXC and requiring exchange carriers that provided billing and collection services to one IXC to provide such services to all IXCs. In 1986, however, the Commission de-tariffed billing and collection services provided by LECs and found regulation of such services to be unnecessary. In 1992, the Commission clarified that billing and collection service was a communications service within the meaning of section 3(a) of the Act,¹⁵ but that it was not subject to regulation under Title II because it was not a "common carrier" service (although it could be regulated under the Commission's ancillary jurisdiction under Title I of the Act). In 1993, the Commission refused to require IXCs to provide billing and collection services to providers of 900 services.

27. In some instances where the provision of billing and collection services has not been required, there have been nondiscrimination requirements. For instance, in the 1996 Telecommunications Act, Congress added section 272¹⁶ requiring Bell Operating Companies (BOCs) who wished to provide certain types of services to provide them through separate affiliates. Section 272(c)(1) of the Act provides that BOCs may not discriminate between such affiliates and "any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. * * *" ¹⁷ In implementing that section, we held that to the extent a BOC provides billing and collection services to an affiliate, such services were subject to the non-discrimination requirements of section 272(c)(1).¹⁸ The Commission's Rules also defined the term "entity" as including "telecommunications carriers, ISPs, and manufacturers."¹⁹

28. At this point, the record is not sufficient to decide, as a policy matter, whether the Commission should require CPP-related LEC billing and collection. The NPRM seeks comment on whether such billing and collection is needed for the regional or nationwide offering of CPP, and, if so, whether that need

reflects market failure or some anti-competitive conduct. In addition, the NPRM asks whether the offering of CPP would be cost-prohibitive in the absence of incumbent LEC billing and collection services. The Commission also seeks specific comment on the availability of alternatives, such as third party billing through credit card companies or clearinghouses. The NPRM notes that with technological developments, CMRS carriers interested in providing a CPP service option may want to develop their own capabilities to rate and record billing information, with LECs making use of that information if the LECs were to bill LEC customers directly. The NPRM seeks comment on these developments and their impact on implementing CPP, particularly in regard to LEC billing and collection, third party billing, and CMRS carrier billing.

29. The NPRM seeks comment on whether the Commission should mandate that LECs provide to CMRS providers billing information sufficient for the CMRS provider or third parties to bill calling parties for CPP-related calls or that LECs provide any CPP-related billing and collection on a nondiscriminatory basis.

30. The NPRM seeks comment on whether calls placed through Telecommunications Relay Service (TRS) facilities, including those from pay telephones, or calls between two text telephone (TTY) users, implicate any additional billing and collection issues that may need to be addressed in this proceeding. Commenters are requested to be as specific as possible about the nature of the TRS and/or TTY related problems in billing and collection and should propose solutions. The NPRM also solicits comment on any other problems or issues that may affect consumers, including those with disabilities, if CPP were to be implemented on a broader scale by wireless carriers in the United States.

Potential Jurisdictional Bases for Commission Action

31. Assuming that the Commission concludes in this proceeding as a policy matter that requires the provision of LEC billing and collection for CPP in the U.S., the NPRM seeks comment concerning our statutory authority to promulgate such a requirement. Specifically, the NPRM seeks comment on several potential sources of jurisdiction raised by the commenters in response to the Notice of Inquiry.

32. The NPRM seeks comment on whether the statutory objectives of the Act support the assertion of ancillary

jurisdiction here, and on AirTouch's contentions that the exercise of jurisdiction over LEC billing and collection in the CPP context is distinguishable from other instances where the Commission has declined to exercise ancillary jurisdiction over LEC billing and collection.²⁰ Finally, the NPRM seeks comment on whether other provisions of the Act, such as section 332,²¹ provide an independent jurisdictional basis for a federal requirement regarding CPP-related billing and collection.

33. The NPRM also seeks comment on whether we have jurisdiction under any of the theories described above over the provision of billing information by LECs to support CPP-related billing and collection by others. Some commenters argue that in the case of ILECs, we have authority to require the provision of billing information under section 251(c)(3) of the Act, which requires that ILECs provide nondiscriminatory access to "network elements" on an unbundled basis.²² These commenters argue that billing and collection information constitutes a unbundled network element (UNE) that is subject to this statutory requirement. The NPRM seeks comment on this view, particularly in light of the fact that the definition of "network element" in section 3(29) of the Act includes "information sufficient for billing and collection."²³ The Commission seeks comment on whether such information would need to be unbundled under the statutory "necessary" and "impair" standard. The Commission plans to apply the criteria developed on remand from the Supreme Court's decision in *Iowa Utilities Board*.²⁴

34. Assuming that a LEC is providing CPP-related billing and collection services or information, the NPRM also seeks comment on whether we have jurisdiction to require that LEC to provide such services or information on a reasonable, non-discriminatory basis. Assuming that the Commission is to determine that CPP-related billing information qualifies as a UNE subject to section 251(c)(3), the Act requires that incumbent LECs provide nondiscriminatory access to UNEs "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."²⁵ In view of this requirement, the NPRM seeks comment on whether, if an ILEC

¹⁵ 47 U.S.C. 3(a) (current version at 47 U.S.C. 3(51) (1996)).

¹⁶ 47 U.S.C. 272(a).

¹⁷ 47 U.S.C. 272(c)(1).

¹⁸ Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 62 FR 2991 (Jan. 21, 1997), 11 FCC Rcd 21905, 22007-22008 (paras. 216-219) (1996).

¹⁹ *Id.*

²⁰ 47 U.S.C. 4(i).

²¹ 47 U.S.C. 332.

²² 47 U.S.C. 251(c)(3).

²³ 47 U.S.C. 153(29).

²⁴ AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999).

²⁵ 47 U.S.C. 251(c)(3).

elects to provide billing and collection for CPP for any CMRS carrier, the ILEC must offer the same services on a reasonable, non-discriminatory basis to all CMRS carriers who request such services. Further, the NPRM invites comment on whether the Commission has authority, based on ancillary jurisdiction or any other statutory provisions, to impose similar non-discrimination requirements with respect to CPP-related billing information on incumbent LECs and on non-incumbent LECs, *i.e.*, competitive LECs and LECs serving rural areas, who are not subject to section 251(c)(3).

35. The NPRM seeks comment on jurisdictional issues relating to state regulation of LEC CPP-related billing and collection. Under section 332 of the Act, states are preempted from regulating entry by CMRS providers. Similarly, section 253(a) prohibits any state or local statute or regulation that constitutes a barrier to entry to any telecommunications service provider, although section 253(b) preserves intact state regulatory authority to "safeguard the rights of consumers."²⁶ Some commenters contend that if a state were to prohibit LECs from providing billing and collection services in support of CPP, this would effectively preclude CMRS carriers from providing CPP within the state, and would therefore constitute *de facto* entry regulation subject to preemption under section 332 or a barrier to entry under section 253. The NPRM seeks comment on this view. In addition, some commenters point out that the California PUC has recently denied a petition by AirTouch to compel Pacific Bell to provide billing and collection for a CPP trial based on Pacific Bell's tariff for billing and collection of wireless services. The denial was based on language in a California PUC decision that prohibits a LEC from billing its wireline customers at wireless rates for calls placed to wireless phones. The NPRM seeks comment on whether this decision raises jurisdictional issues that the Commission should address.

CPP, Interconnection, and Reciprocal Compensation

36. The Notice of Inquiry also sought comment regarding whether the implementation of reciprocal compensation for LEC-CMRS interconnection requirements provides a sufficient market incentive for CMRS carriers not to charge their subscribers for incoming calls. The Notice of Inquiry noted that CPP and reciprocal compensation may address a similar

issue regarding the means by which a CMRS provider recoups the cost of completing a call that does not originate on the CMRS network. The Commission asked for comment regarding whether reciprocal compensation would eliminate or reduce the need for CPP.

37. The Commission agrees with parties who contend that, under existing interconnection agreement, compensation for transport and termination generally does not cover the costs of terminating airtime. As a result, the Commission does not believe that the availability of reciprocal compensation renders moot any issues regarding CPP.

38. Some parties contend that, although CPP can be distinguished from and is not the same thing as reciprocal compensation, CPP-like service can be offered by expanding existing interconnection agreements. Sprint Spectrum indicates that implementation of CPP through interconnection agreements is done in Europe and elsewhere. Under these agreements, the caller is billed by the LEC based on published LEC rates for fixed-to-mobile calls. The LEC is solely entitled to the caller's account and has sole responsibility for bad debt. The LEC pays the wireless carrier an interconnection charge to terminate traffic on the wireless network. The interconnection charges are determined either by regulators or negotiated bilaterally by the carriers involved. Under the European model, the wireless carrier for the called party imposes a wireless termination access charge on the LEC, or the wireless carrier originating the call. The LEC or the wireless carrier serving the originating caller may, in turn, bill its customer, the calling party, to recoup the charge (if it so chose). Such implementation of a CPP service would amount to "asymmetrical compensation," such that the symmetrical rates between wireline and wireless carriers for transport and termination under a reciprocal compensation arrangement would not be operative. With the asymmetrical, or non-symmetrical, compensation approach, CMRS carriers would not need to recover their costs with a distinct "airtime" charge for use of the CMRS carriers' network if all of the costs related to completing a call to a wireless phone are included in the "asymmetrical" rate.

39. Thus, the NPRM invites parties generally to comment on these and any other issues relating to the possible provision of CPP-like service by CMRS carriers wanting to use an interconnection approach. The Commission also seeks comment on the

impact of such an approach on LECs, including competitive LECs (CLECs), and upon CMRS (such as paging) providers.

Administrative Matters

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained in the Notice of Proposed Rulemaking (NPRM) should be submitted to David Siehl, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, 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 a reference to WT Docket No. 97-207. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get from <your E-Mail address>."

All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments will be available for public inspection during regular business hours in the Commission's Reference Center and through ITS, Inc., the Commission's duplicating contractor.

For purposes of this proceeding, the Commission waives those provisions of the rules that require formal comments to be filed on paper, and encourages parties to file comments electronically. Electronically filed comments that conform to the guidelines specified in this summary will be considered part of the record in this proceeding and accorded the same treatment as comments filed on paper pursuant to Commission rules. To file electronic comments in this proceeding, parties may use the electronic filing interface available on the Commission's World Wide Web site at: <<http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/>>

²⁶ 47 U.S.C. 253(a)-(b).

beta/ecfs/upload.hts>. Further information on the process of submitting comments electronically is available at that location and at: <http://www.fcc.gov/e-file/>.

For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted, except during the "Sunshine Agenda" period, provided they are disclosed under the Commission's rules.

Ordering Clauses

Accordingly, *it is ordered* That the actions reflected in the Notice of Proposed Rulemaking of this Declaratory Ruling and Notice of Proposed Rulemaking are taken pursuant to sections 1, 4(i), 7, 201, 202, 303(r), and 332 of Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 201, 202, 303(r), 332.

It is further ordered That notice is hereby given of the proposed regulatory changes described in the Notice of Proposed Rulemaking, and that comment is sought on these proposals.

It is further ordered That the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice, including the Initial Regulatory Flexibility 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. 1164, 5 U.S.C. 601-612 (1980).

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),²⁷ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). 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 in paragraph 77 of the full text of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.²⁸ In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.²⁹

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

In this NPRM, the Commission proposes solutions to obstacles that may be impeding the ability of carriers interested in offering Calling Party Pays (CPP) from doing so. CPP holds the potential for making mobile wireless services more attractive to large numbers of customers who do not subscribe today, and for spurring the acceptance and development of services offered by mobile wireless telecommunications providers as competitive alternatives to the services of local exchange carriers (LECs). There is significant evidence that CPP would help encourage Commercial Mobile Radio Service (CMRS) subscribers to leave their handsets on and available to receive incoming calls because they would not be incurring as high a cost for receiving calls on a usage-sensitive basis. This increases the use of mobile wireless services, and provides certain benefits to both calling parties, who otherwise would not be able to complete calls to CMRS subscribers who keep their phones off, and CMRS subscribers, who would no longer have an economic incentive to avoid or minimize the acceptance of calls. These benefits may be especially significant for price-conscious customers who find that the flat-rate plans that come with large numbers of minutes included are too expensive. CPP would also be beneficial to those consumers concerned with the ability to control their monthly telecommunications expenses. Thus, CPP holds the potential for making mobile wireless services more effectively available to large numbers of customers who do not subscribe today or who strictly limit their usage, and to spur further competition by offering a different service option that may be particularly attractive to low-income, and low-volume and mid-volume consumers.

Because the Commission finds that there is some uncertainty about the regulatory status of CPP, the Commission issued a Declaratory Ruling clarifying that service offered with a CPP option, as defined in paragraph 2 of the full text of the NPRM, still qualifies as CMRS service. The NPRM considers important calling party notification issues. The Commission there considers a uniform notification standard to protect calling parties by providing them with sufficient information to make an informed decision before completing a CPP call to a wireless subscriber and incurring charges. The Commission also asks how it may work cooperatively with the

states to develop such a notification system. The Commission also seeks comment on possible additional measures. Second, the Commission discusses and seeks comment on whether the proposed notification is sufficient to create an "implied-in-fact" contract between the caller and the CMRS carrier. Third, the Commission discusses whether there is any need for Commission action to protect callers from unreasonably high charges for CPP calls. Fourth, the Commission discusses how CMRS providers may bill and collect from the calling party for calls to CPP subscribers, including LEC billing and collection. The Commission also seeks comment at various points on issues relating to the accessibility of CPP offerings to people with disabilities, including Telecommunications Relay Service (TRS) and text telephone (TTY) users.

B. Legal Basis for Proposed Rules

The proposed action is authorized under sections 1, 4(i), 7, 201, 202, 303(r), and 332 of Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 201, 202, 303(r), 332.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will 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, if adopted.³⁰ 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.³¹ 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).³² A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."³³ Nationwide, as of 1992, there were approximately 275,801 small organizations.³⁴ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a

³⁰ 5 U.S.C. 603(b)(3).

³¹ 5 U.S.C. 601(3).

³² Small Business Act, 15 U.S.C. 632 (1996).

³³ 5 U.S.C. 601(4).

³⁴ 47 U.S.C. 33.

²⁷ See 5 U.S.C. 603.

²⁸ See 5 U.S.C. 603(a).

²⁹ See *id.*

population of less than 50,000.”³⁵ As of 1992, there were approximately 85,006 such jurisdictions in the United States.³⁶ 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 (96 percent) are small entities. Below, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by the rules, herein adopted.

Common Carrier Services and Related Entities

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report. According to data in the most recent report, there are 3,528 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.

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.³⁷ Below, the Commission discusses the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and then attempts to refine further those estimates to correspond with the categories of telephone companies that are commonly used under its rules.

Although some affected incumbent local exchange carriers (ILECs) may

have 1,500 or fewer employees, the Commission does 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, the Commission 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.”³⁸

Total Number of Telephone Companies Affected

The U.S. Bureau of the Census (“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, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not “independently owned and operated.”³⁹ For example, a reseller that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules.

Wireline Carriers and Service Providers

The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA’s definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.⁴⁰ 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. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA’s definition. Consequently, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules.

Local Exchange Carriers

Neither the Commission nor the SBA has developed a definition for small providers of local exchange 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, 1,410 carriers reported that they were engaged in the provision of local exchange services. The Commission does 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 is 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, the Commission estimates that fewer than 1,410 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules.

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.⁴¹ According to the most recent *Trends in Telephone Service* data, 509 carriers reported that they were engaged in the provision of pay telephone services. The Commission does not have data

³⁵ 5 U.S.C. 601(5).

³⁶ Commission regulation, as adopted pursuant to the CMRS *Second Report and Order*, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425, 1427-28 (paras. 39 through 43) (1994) (*CMRS Second Report and Order*), *recon. pending* (adopting section 20.3), further delineates the statutory definition. Section 20.3(a)(1) adds to the phrase, “provided for profit,” the following language: “i.e., with the intent of receiving compensation or monetary gain.” 47 CFR 20.3(A)(1).

³⁷ 13 CFR 121.201.

³⁸ 13 CFR 121.201, SIC code 4813.

³⁹ See generally, 15 U.S.C. 632(a)(1).

⁴⁰ 13 CFR 121.201, SIC code 4813.

⁴¹ 13 CFR 121.201, SIC code 4813.

specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 509 small entity pay telephone operators that may be affected by the proposed rules.

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.⁴² According to the most recent *Trends in Telephone Service* data, 358 reported that they were engaged in the resale of telephone service. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is 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, the Commission estimates that there are fewer than 358 small entity resellers that may be affected by the proposed rules.

International Services

The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.⁴³ According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million. The Census report does not provide more precise data.

Wireless and Commercial Mobile Services

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.⁴⁴ According to the Bureau of the Census, only twelve radiotelephone firms from 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, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends in Telephone Service* data, 732 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. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is 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, the Commission estimates that there are fewer than 732 small cellular service carriers that may be affected by the proposed rules.

220 MHz Radio Service-Phase I Licensees

The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, the

Commission estimates that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service-Phase II Licensees

The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz **Third Report and Order**, the Commission adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined 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 defined as 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. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

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, the Commission will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500

⁴² *Id.*

⁴³ 13 CFR 120.121, SIC code 4899.

⁴⁴ 13 CFR 121.201, SIC code 4812.

persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service* data, 137 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is 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, the Commission estimates that there are fewer than 137 small paging carriers that may be affected by the proposed rules, if adopted. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

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,⁴⁵ and the most recent *Telecommunications Industry Revenue* data shows that 23 carriers reported that they were engaged in the provision of SMR dispatching and "other mobile" services. Consequently, the Commission estimates that there are fewer than 23 small mobile service carriers that may be affected by the proposed rules.

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. Based on this information, the Commission concludes 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.

Narrowband PCS

The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Rural Radiotelephone Service

The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).⁴⁶ The Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁷ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of

them qualify as small entities under the SBA's definition.

Air-Ground Radiotelephone Service

The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.⁴⁸ Accordingly, the Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

Specialized Mobile Radio (SMR)

The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than \$15 million in each of the three previous calendar years.⁵⁰ In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought. The proposed rules in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does 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 of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

Offshore Radiotelephone Service

This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.⁵¹ At present, there are approximately 55 licensees in this service. We are unable at this time to

⁴⁸ The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

⁴⁹ 13 CFR 121.201, SIC code 4812.

⁵⁰ 47 CFR 90.814(b)(1).

⁵¹ This service is governed by subpart I of part 22 of the Commission's Rules. See 47 CFR 22.1001-22.1037.

⁴⁶ BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

⁴⁷ 13 CFR 121.201, SIC code 4812.

⁴⁵ 13 CFR 121.201, SIC code 4812.

estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

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

CMRS carriers interested in offering their subscribers CPP would be required to provide a notification to those placing calls to the CPP subscriber that include the following elements: (1) Notice that the calling party is making a call to a wireless phone subscriber that has chosen the CPP option, and that the calling party therefore will be responsible for payment of airtime charges; (2) Identification of the CMRS provider; (3) The per minute rate, or other rates, that the caller will be charged by the CMRS provider; and (4) An opportunity to terminate the call

prior to incurring any charges. In addition, LECs may be required to provide billing name and address information to CMRS carriers for parties who call CPP subscribers. Comments are also requested on the possible need for billing and collection services to be provided for CPP by LECs. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The Commission has minimized burdens to the maximum extent possible. CPP is an optional CMRS offering that carriers may provide to their wireless subscribers, at the sole discretion of the carrier. As to the

provision of caller billing name and address information, or billing and collection services, it is anticipated that any such services would be provided to CMRS carriers at negotiated rates that would enable LECs to recover all associated costs. The Commission seeks comment on significant alternatives that commenters believe should be adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules: None

List of Subjects in 47 CFR Part 20

Communications common carrier;
Communications radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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