

Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. This proposed rule would modify existing design-based certification requirements to incorporate safe recommended practices, developed through industry consensus, for portable marine fuel tanks. Specifically, it incorporates by reference ABYC H-25, "Portable Marine Gasoline Fuel Systems," July, 2010. Anyone may purchase copies of these materials from the American Boat and Yacht Council, 613 Third Street, Suite 10 Annapolis, MD 21403 or <http://www.abycinc.org/>.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule would merely modify existing design-based certification requirements to incorporate safe recommended practices, developed through industry consensus, for portable marine fuel tanks.

K. Statutory Authority

The statutory authority for this action comes from section 213 of the Clean Air Act as amended (42 U.S.C. 7547). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 1060

Environmental protection, Air pollution control, Incorporation by reference, Marine spark-ignition engines and vessels.

Dated: September 9, 2010.

Lisa P. Jackson,
Administrator.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 05-337, CC Docket No. 96-45; FCC 10-155]

High-Cost Universal Service Support and Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) undertakes important steps for fiscally responsible universal service fund reform. The Commission seeks comment on permanently amending our rules to facilitate efficient use of reclaimed excess high-cost support. In addition, the Commission seeks comment on a proposal to modify our rules to reclaim legacy support surrendered by a competitive ETC when it relinquishes ETC status in a particular state.

DATES: Comments on the proposed rules are due on or before October 7, 2010 and reply comments are due on or before October 21, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 05-337 and CC Docket No. 96-45, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ted Burmeister, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7389 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in WC Docket No. 05-337, CC Docket No. 96-45, FCC 10-155, adopted August 31, 2010, and released September 3, 2010. This NPRM was also released with a companion Final Rule document that is published elsewhere in this **Federal Register** issue. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, one copy of each pleading must be sent to each of the following:

- The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554; Web site: <http://www.bcpweb.com>; phone: 1-800-378-3160;

- Theodore Burmeister, Telecommunications, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5-A5360, Washington, DC 20554; e-mail: Theodore.Burmeister@fcc.gov; and

- Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5-A452, Washington, DC 20554; e-mail: Charles.Tyler@fcc.gov.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: fcc504@fcc.gov; phone: (202) 418-0530 or (202) 418-0432 (TTY).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY-B402, Washington, DC. 20554. Customers may contact BCPI through its Web site: <http://www.bcpweb.com>, by e-mail at fcc@bcpweb.com, by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562

(TTY), or by facsimile at (202) 488-5563.

1. In the Order and Notice of Proposed Rulemaking (NPRM), we undertake important steps for fiscally responsible universal service fund reform. Verizon Wireless and Sprint Nextel, in separate transactions in 2008, each committed to surrender their high-cost universal service support over five years, but those commitments have yet to be implemented. Corr Wireless Communications, LLC (Corr Wireless) has asked that any support reclaimed from Verizon Wireless and Sprint Nextel be redistributed to other competitive eligible telecommunications carriers (ETCs).

2. In the NPRM, we seek comment on permanently amending our rules to facilitate efficient use of reclaimed excess high-cost support. In addition, we seek comment on a proposal to modify our rules to reclaim legacy support surrendered by a competitive ETC when it relinquishes ETC status in a particular state.

Synopsis of Notice of Proposed Rulemaking

3. In the NPRM, we seek comment on modifying our rules to better enable the Commission to reclaim certain high-cost support, and to use that support to help fund broadband universal service programs, consistent with the recommendations of the National Broadband Plan. First, we seek comment on amending the interim cap rule so that a state's interim cap amount would be adjusted if a competitive ETC serving the state relinquishes its ETC status. In the *Interim Cap Order*, the Commission capped high-cost support for voice service provided to competitive ETCs serving each state at the level of support such carriers were eligible to receive in March 2008, on an annualized basis. This cap amount does not change even if the number of competitive ETCs serving the state changes. We propose amending the interim cap rule so that, if a competitive ETC relinquishes its ETC status in a state, the cap amount for that state is reduced by the amount of support that the competitive ETC was eligible to receive in its final month of eligibility, annualized.

4. The goal of the *Interim Cap Order* was to rein in high-cost universal service disbursements, and additional support would not necessarily result in future deployment of expanded service. Reducing the total amount of support available to competitive ETCs in a state when a competitive ETC relinquishes its ETC status in that state will not reduce support flowing to any individual

competitive ETC. Reducing the pool of support in a state also would enable excess funds from the legacy high-cost program to be used more effectively to advance universal service broadband programs, as recommended by the National Broadband Plan. We invite comment on this proposal.

5. Second, we seek comment on amending § 54.709(b) to permit the Commission to provide the Universal Service Administrative Company (USAC) alternate instructions for implementing prior period adjustments. In the accompanying order, we adopt an interim waiver of § 54.709(b) to enable us to direct USAC to reserve reclaimed funds as we consider broadband universal service reform. Amending the rule as proposed would serve this same purpose, on a permanent basis. In addition, it would enable the Commission to provide USAC with alternate instructions regarding future excess funds in other situations without having to adopt a rule waiver.

6. We seek comment on how to develop a streamlined, administratively workable process for providing such instruction to USAC, if we amended § 54.709(b). We seek comment regarding the form that the instructions must take, including whether the instructions must be provided in an order, public notice, or other form. We also seek comment on a process by which the Wireline Competition Bureau or Office of the Managing Director would issue a public notice providing instruction to USAC that would become effective absent action by the Commission within fourteen days. We note that, for the purpose of calculating the contribution factor, the Commission already has the authority to set demand and administrative expenses at levels other than those shown in USAC's quarterly demand projections. The modification we propose here would permit the Commission, or the Wireline Competition Bureau or Office of the Managing Director on delegated authority, to instruct USAC to modify the prior period adjustments in the quarterly demand projections. We request comment on this proposal.

Procedural Matters

Paperwork Reduction Act

7. This notice of proposed rulemaking does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995. In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees" pursuant to

the Small Business Paperwork Relief Act of 2002.

Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended, *see* 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this 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. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the SBA. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Notice

9. In the NPRM, the Commission seeks comment on a proposal to modify its interim cap on support for competitive eligible telecommunications carriers (ETCs) so that if a competitive ETC relinquishes its ETC status, the amount of support it receives would be removed from the cap amount. The Commission is considering this action so that support removed from the cap may be reserved as a potential down payment on proposed broadband universal service reforms as recommended by the National Broadband Plan, including to index the E-rate funding cap to inflation to enhance broadband opportunities for children, teachers, schools, and libraries; support a Mobility Fund to provide wireless broadband service in areas that lack coverage; improve utilization of the Rural Health Care program to advance telemedicine in rural areas across the country, including Tribal lands; and, in the long term, directly support broadband Internet services for all Americans.

10. The Commission also seeks comment on a proposal to modify its rules governing the calculation of the universal service fund contribution factor. Specifically, we seek comment on amending § 54.709(b) to enable the Commission to provide USAC with alternate direction regarding the application of excess contributions from prior quarters. The current rule requires that excess contributions be applied in the next quarter, effectively reducing the contribution factor in that quarter. In the associated Order, the Commission waives the rule on an interim basis and directs USAC to reserve reclaimed funds

as a potential down payment on proposed broadband universal service reforms. In the NPRM, the Commission seeks comment on amending the rule to permit it to do so permanently. In addition, amending the rule as proposed would enable the Commission to provide USAC with alternate instructions regarding future excess funds in other situations without having to adopt a rule waiver.

Legal Basis

11. This legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 4(j), 201–205, 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 214, 220, and 254 and 1.411 of the Commission's rules, 47 CFR 1.411.

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

12. 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 and policies, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

13. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

14. *Small Organizations.* Nationwide, as of 2002, there are approximately 1.6 million small organizations. A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”

15. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, we

estimate that most governmental jurisdictions are small.

16. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

17. *Competitive Local Exchange Carriers (“CLECs”), Competitive Access Providers (“CAPs”), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are “Other Local Service Providers.” Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our action.

18. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”

Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

19. 2.3 GHz Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

20. 1670–1675 MHz Services. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

21. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are

small under the SBA small business size standard.

22. Broadband Personal Communications Service. The broadband personal communications services (“PCS”) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard 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 small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

23. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

24. Advanced Wireless Services. In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (“AWS–1”). The AWS–1 licenses were licenses for which there were no winning bids in

Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

25. 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. 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 \$15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses. The third category is “entrepreneur,” which 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 approved these small size standards. The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed

small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

26. In 2007, the Commission adopted the *700 MHz Second Report and Order*. The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. Later in 2008, the Commission concluded Auction 73. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded \$15 million, but did not exceed \$40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.

27. *700 MHz Guard Band Licenses*. In the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding

three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

28. *Specialized Mobile Radio*. The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40

winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

29. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR 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. In addition, we do not know how many of these firms have 1500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

30. *Cellular Radiotelephone Service*. Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.

31. *Private Land Mobile Radio ("PLMR")*. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

32. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

33. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS"). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

34. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses in 2007. In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed \$15 million but do not exceed \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. Neither of the two winning bidders sought such designated entity status.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

35. The NPRM does not propose any reporting, recordkeeping, or other compliance requirements.

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

36. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of

compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

37. The NPRM proposes reducing the size of the interim cap on competitive ETC support when any competitive ETC relinquishes its ETC designation. Under certain circumstances, this may have a significant economic impact on other competitive ETCs that are small entities. For example, as described in footnote 31 of the Order, the reduction in size of a state interim cap amount could negatively affect a competitive ETC that is a small entity if another competitive ETC is later designated and receives a share of the smaller interim cap amount. While the designation of another competitive ETC would have an impact on the support received by the small entity even without the adoption of the proposed rule, the proposed rule could magnify that impact. The Commission is seeking comment on this rule, in part to consider its necessity and any alternatives. Because, however, the purpose of the proposed rule is to reduce the amount of high-cost universal service support received by competitive ETCs, it is not likely that a significant alternative could be chosen that would minimize the effect of the proposed rule if it is, in fact, adopted.

38. The NPRM also seeks comment on a proposed rule that would give the Commission the ability to provide the universal service administrator alternate instructions with regard to the use of extra or unused funds. The current rules require that the administrator use such funds to reduce the need for universal service contributions in the next quarter. The proposed rule would permit the Commission to instruct the administrator to reserve the funds for later use. Because the later use of the funds would also require universal service contributions, the overall effect of this proposed rule would be to shift the time of the contributions' collection, not to change the long-term amount contributed. Accordingly, we do not believe there is a significant economic impact, on small entities or otherwise, associated with this proposed rule.

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

39. None.

Ex Parte Presentations

40. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex*

parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

Comment Filing Procedures

41. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

42. In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554; website: www.bcpweb.com; phone: 1-800-378-3160. Furthermore, three copies of each pleading must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5-A452, Washington, DC 20554; e-mail: Charles.Tyler@fcc.gov.

43. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. Copies may also be purchased

from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its website: www.bcpweb.com, by e-mail at fcc@bcpweb.com, by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (tty), or by facsimile at (202) 488-5563.

44. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: (202) 418-0530 or TTY: (202) 418-0432.

45. For further information regarding this proceeding, contact Ted Burmeister, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7389, or Theodore.Burmeister@fcc.gov.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.709 is amended by revising paragraph (b) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

* * * * *

(b) If the contributions received by the Administrator in a quarter exceed the amount of universal service support program contributions and administrative costs for that quarter, the excess payments will be carried forward to the following quarter, unless otherwise instructed by the Commission. The contribution factors for the following quarter will take into consideration the projected costs of the support mechanisms for that quarter and the excess contributions carried over from the previous quarter.

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