

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 1, 20, and 43****[CC Docket No. 99–301, FCC 01–19]****Local Competition and Broadband Reporting****AGENCY:** Federal Communications Commission.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Federal Communications Commission seeks comment about whether it should modify a program to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband.

**DATES:** Comments are due on or before March 19, 2001 and reply comments are due on or before April 2, 2001. Written comments by the public on the proposed information collections are due on or before March 19, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before April 16, 2001.

**ADDRESSES:** Comments and replies shall be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, with a copy to Ms. Suzanne McCrary of the Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW., 6–A220, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20037. Parties may file electronically through the Internet at <http://www.fcc.gov/e-file/ecfs.html>. In addition to filing comments and replies with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to [Edward.Springer@omb.eop.gov](mailto:Edward.Springer@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Dr. Ellen Burton, Industry Analysis Division, Common Carrier Bureau, at (202) 418–0958, or Thomas J. Beers, Deputy Chief of the Industry Analysis

Division, Common Carrier Bureau, at (202) 418–0952. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) released January 19, 2001 (FCC 01–19). The full text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 1231 20th Street, NW., Washington, DC 20037. Additionally, the complete item is available on the Commission's website at <http://www.fcc.gov/Bureaus/CommonCarrier/Notices/2001/>. This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

**Paperwork Reduction Act**

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Control Number:* 3060–0816.

*Title:* “Local Competition and Broadband Reporting, CC Docket No. 99–301”.

*Form No.:* FCC Form 477.

*Type of Review:* Revision of Existing Collection.

*Respondents:* Business or Not-for-profit institutions, including small businesses.

*Number of Respondents:* Up to 490.

*Estimated Time Per Response:* 65–70 person-hours.

*Total Annual Burden:* Up to 32,924 person-hours.

*Cost to Respondents:* \$0.

*Needs and Uses:* The information collection is a proposed modification of an already authorized program. As before, the program will be used by the Commission to gather information on the state of the development of local competition and broadband deployment. Without such information, the Commission faces significant difficulty in assessing the development of these markets and, therefore, is less able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

**Summary of the Notice of Proposed Rulemaking**

1. In the NPRM summarized here, we seek comment whether we should make changes to a previously implemented FCC program (Form 477) to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband. We seek comment about certain specific changes to broadband information submitted pursuant to Form 477, but propose only relatively minor changes to the portions of Form 477 that cover local competition data or data about mobile telephone services. We do, however, generally solicit comment about all aspects of the data collection program including those that deal with local competition and mobile services data. Overall, our re-examination of the existing data gathering program is driven by concern that we require additional data about the deployment and availability of broadband services to discrete geographic areas and among distinct demographic groups in order to satisfy the statutory mandate of section 706 of the Telecommunications Act of 1996, 47 U.S.C. 706 nt. Nevertheless, we continue to attempt to balance the burdens imposed by the Form 477 program on data providers against the usefulness of the data. Throughout the NPRM, we explain our reasons for seeking comment on specific proposals.

2. *Reporting Thresholds.* For purposes of this data gathering program, we continue to define “broadband services” to refer to those services that deliver an information carrying capacity in excess of 200 kbps in at least one direction; where the service delivers capacity in excess of 200 kbps in both directions, we call it “full broadband” or “full, two-way broadband.”

3. Our data collection program currently requires broadband, local competition and mobile telephone service providers to complete only those portions of Form 477 for which they meet or exceed defined reporting thresholds. For broadband reporting, that means that facilities-based providers with at least 250 full two-way or one-way broadband lines—or wireless channels—in a given state must report broadband data per applicable portions of the Form 477; providers who fall below the threshold may report data on a voluntary basis. Driven by concern that the existing broadband threshold may be too high for us to collect sufficient information about broadband deployment, particularly in rural and other sparsely populated areas, we ask whether we should keep the existing broadband threshold, lower that threshold, raise it, or eliminate it altogether. We encourage commenters to explain how any alternative would balance our competing desires to obtain comprehensive broadband information without imposing undue burdens on entities that serve comparatively few customers. In particular, we take note of a Petition for Reconsideration of our Report and Order adopting the Form 477 program filed by Iowa Telecom. In its petition, Iowa Telecom asks the Commission to create an exemption for “mid-sized LECs \* \* \* which serve primarily rural communities” and employ statistical sampling to gather needed information. We specifically ask commenters to address the Iowa Telecom petition which we will consider as part of this proceeding. (Note: We do not propose to change existing thresholds for local telephone service and mobile telephone service reporting.)

4. *Data to be Reported.* Currently, pursuant to Form 477, providers must report information about subscribership to their broadband, local telephone, and mobile telephone services offerings per two classes of users: (1) Residential and small business users; and (2) Large business and institutional users. In the NPRM we seek comment whether we should alter Form 477 so that it more precisely captures distinctions between broadband deployment to residential and business users. We ask, accordingly,

whether we should require broadband providers to report subscribership information per three user classes: (1) residential users; (2) small business users; and (3) large business and institutional users. We seek comment about what criteria should be used to distinguish among these classes of users, and whether reporting providers should also distinguish between subscribers who subscribe to full, two-way broadband service and those who subscribe to one-way broadband service offerings. We note our continued belief that information about broadband deployment by zip code is the administratively simplest way to obtain finer geographic granularity of subscribership information. We seek comment whether providers should report actual subscribership by zip code—with a separate breakdown for residential subscribership—rather than the current requirement that merely lists zip codes where broadband service is delivered. We ask whether additional information, including distinctions between the types of technology used to provide broadband services, should be provided at the zip code level. We seek comment about alternatives to zip code-specific data; and ask commenters generally, per the mandate of section 706, whether collecting additional subscribership information would necessarily increase our understanding of whether broadband is being made available to all Americans.

5. We tentatively conclude that we should require providers to report data on the availability of broadband as well as on actual subscribership. We seek comment on such measures of availability as (1) number of homes passed by broadband-capable infrastructure; (2) zip codes where service is currently offered to all or some percentage of customers within the zip code; (3) for providers of telephone or cable video services, the number of their customers who have broadband services available to them; (4) any other measure. We seek comment on other issues related to availability and also whether there is other useful information we should collect to inform the Commission’s understanding why broadband subscribership rates remain low in some areas where broadband is available. We ask, in particular, whether there are alternative sources of availability, demand, and subscribership information about low income consumers, those living in sparsely populated areas, and others who the Commission has found may be

particularly vulnerable to not receiving timely access to broadband services.

6. Our existing broadband data gathering is limited to broadband lines connected to the Internet or to another public network. We seek to clarify the scope of broadband services subject to Form 477 by asking whether we also should collect information about broadband lines that are not connected to the Internet, for example, so-called “private” broadband lines that connect multiple locations of one customer. Examples could include corporate intranet configurations or private networks for educational or health care institutions. We seek specific comment about how to define such services in order to ensure data accuracy and comparability with other collected broadband data.

7. We seek comment on relatively minor revisions to the local competition and mobile telephone service portions of the Form 477 by, *inter alia*, proposing to reorganize certain sections of the form and to eliminate data requests that may have caused confusion.

8. *Confidentiality Issues.* Currently we attempt to make publicly available as much local competition and broadband data as possible, while affording providers full opportunity to file data pursuant to requests for confidential treatment. Moreover, in the case of broadband data, we publish in our reports only data aggregations that do not identify particular providers regardless whether they have requested confidential treatment. We seek comment whether we should establish a rebuttable presumption that some or all Form 477 data do not typically meet our standards for competitively sensitive information. We also seek comment on how other proposals proffered in the NPRM affect the need for confidential treatment of data.

9. *Frequency of Filing.* Our current Form 477 program requires providers to file data twice each year. Given dynamic growth in the broadband market, we seek comment whether we require more frequent filings. Alternatively, we ask whether we should reduce increased burdens potentially imposed pursuant to this NPRM by reducing the number of Form 477 filings to one per year.

10. *Analysis of Data.* We seek comment whether the additional data proposed to be collected make possible relatively more sophisticated statistical and other analyses by the Commission. We also seek comment about associated issues, including whether the Commission should—and how the Commission could—share data with academics and others, and whether we should give outside parties the

opportunity to review and comment on preliminary findings and methodologies before we adopt any final section 706 reports.

## Procedural Matters

### Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA), 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. 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 this Notice, which are set out in paragraph 33 of the Notice. The Commission will send a copy of this Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### *I. Need for, and Objectives of, the Proposed Action*

12. The Commission has initiated this proceeding to seek comment on how it might refine or improve the data gathering effort that we authorized on March 30, 2000 to assess the degree of deployment of broadband services and the development of local competition. In considering revisions to this program, we seek to develop more fully our understanding of the deployment and availability of broadband services and the development of local competition. At the same time, we seek to eliminate any unnecessary or unduly burdensome aspects of the program and identify aspects of the program that may need further clarification. In particular, we believe that additional data about deployment of broadband services to discrete geographic areas and amongst distinct demographic groups is essential in order to satisfy more fully our obligations under section 706 of the 1996 Act.

#### *II. Legal Basis*

1. The legal basis for the action as proposed for this rulemaking is contained in sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

### *III. Description and Estimate of the Number of Small Entities to Which the Proposed Action May Apply*

14. The Commission seeks comment on whether it should revise its rules so that any entity that provides broadband services must comply with the reporting requirement. Out of an abundance of caution, we set out below a detailed description of the types of entities that could possibly be required to comply with the proposed reporting requirement and we detail our understanding of the number of small entities within each of these categories.

15. 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. To estimate the number of small entities that may be affected by the proposed rules, we first consider the statutory definition of “small entity” under the RFA. The RFA generally defines “small entity” as having the same meaning as the term “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, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

16. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,822 interstate service providers. These providers 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.

17. We have included small incumbent local exchange carriers (LECs) 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 LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

18. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not “independently owned and operated.” For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules proposed in the Notice.

19. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA’s definition, a small business telephone company other than a radiotelephone company is one

employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that are small entities or small incumbent LECs and that may be affected by the rules proposed in the Notice.

20. *Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition of small LECs, competitive access providers (CAPs), interexchange carriers (IXCs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service. According to our most recent data, there are 1,395 LECs, 349 CAPs, 204 IXCs, 21 OSPs, and 541 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,395 small entity LECs or small incumbent LECs, 348 CAPs, 204 IXCs, 21 OSPs, and 541 resellers that may be affected by the decisions and rules proposed in the Notice.

21. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for wireless (radiotelephone) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.

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

22. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. We will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies, however, to the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 806 companies reported that they are engaged in the provision of Wireless Telephony services and 44 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 806 small entity Wireless Telephony Providers and fewer than 44 small entity Other Mobile Service Providers that might be affected by the decisions and rules proposed in the Notice.

23. *Broadband PCS Licensees.* 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 its 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 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, we estimate that the number of small broadband PCS licenses 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 PCS providers as defined by SBA and the Commissioner's auction rules.

24. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 and 900 MHz SMR has been approved by the SBA. The proposed rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the rules proposed in the Notice.

25. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules proposed in the

Notice includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules proposed in the Notice.

**26. 220 MHz Radio Service—Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. 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, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. 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 the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition, some of which may be affected by the decisions and rules proposed in the Notice.

**27. 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* we 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. We have 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 (Regional) 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 October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.

**28. 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, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

**29. 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). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

**30. Air-Ground Radiotelephone Service.** The Commission has not

adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

**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. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number, if any, of small businesses that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States. We note, however, that because the vast majority of these licensees are end-users, not providers of telephony or broadband services, they would not be directly affected by the rules proposed in this Notice.

**32. Fixed Microwave Services.** Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

**33. 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. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

#### 34. *Wireless Communications*

*Services.* This service can be used for fixed, mobile, radio-location 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 Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules proposed in the Notice includes these eight entities.

35. *Satellite Services.* The Commission has not developed a definition of small entities applicable to satellite service licensees. 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. 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.

36. In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

37. *Cable services or systems.* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million

or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.

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

39. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 666,900 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

40. *Multipoint Distribution Systems (MDS).* This service has historically provided primarily point-to-multipoint one-way video services to subscribers. The Commission recently amended its rules to allow MDS licensees to provide

a wide range of high-speed, two-way services to a variety of users.

41. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million. The Commission established this small business definition in the context of this particular service and with the approval of the SBA. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas. Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

42. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by the proposals in this Notice.

43. *Electric Services (SIC 4911).* The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reports that 447 of the 1379 firms listed had total revenues below five million dollars.

44. *Electric and Other Services Combined (SIC 4931).* The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars.

45. *Combination Utilities, Not Elsewhere Classified (SIC 4939).* The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end

of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

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

46. The Notice sets out in detail, and seeks comment on, various proposals to modify the Commission's existing Local Competition and Broadband reporting program. Pursuant to the current reporting program, certain providers of broadband services and of local telephone services must complete FCC Form 477, which collects data on their deployment of those services. Since the adoption of the reporting program, providers have reported data twice and the Commission has issued its *Second Report on Advanced*

*Telecommunications Capability* based in significant part on the data collected through this program. Thus, the Notice seeks comment, in light of these experiences, on ways that the Commission might improve this data gathering effort. The Notice asks whether certain measures to gain additional data might assist the Commission in its efforts to understand the degree and status of deployment of broadband services, without imposing an undue burden on reporting providers. For example, the Notice seeks comment on possible revisions to FCC Form 477 that might more precisely capture distinctions between the deployment of broadband services to residential and business users. Similarly, the Notice seeks comment on whether we should revise the form so that providers report the actual subscribership by zip code, in lieu of the current requirement that providers report a list of zip codes where broadband service is being delivered. Further, the Notice asks whether it is possible to eliminate any unnecessary or unduly burdensome aspects of the reporting program. In addition to seeking comment on the types of data to be reported, the Notice seeks comment on whether to adjust the current reporting thresholds, whether the Commission should alter its confidentiality procedures for data collected, whether it would be appropriate to alter the frequency of filing, and whether there are additional steps that the Commission might take to promote additional analyses of the data. The Notice asks commenters to document, insofar as possible, the burdens that are imposed by our current

requirements and the additional burdens that would be imposed by more detailed reporting requirements.

#### *I. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

48. As mentioned previously, the Notice seeks comment, in light of our experiences since the adoption of the reporting program, on ways that we might improve this data gathering effort. The Notice asks whether there is additional data that would enhance the Commission's ability to understand the status and degree of broadband and local telephone service deployment. At the same time, the Notice asks whether it is possible to eliminate any unnecessary or unduly burdensome aspects of the reporting program. This proposal would reduce burdens on all respondents, including any small entities that must report under the program. Among the alternatives considered in the Notice that might affect small entities is a proposal by Iowa Telecom seeking to create an exemption for "mid-size LECs \* \* \* which serve primarily rural communities." Small entities are specifically encouraged to comment on such an exemption. The Notice seeks comment on whether the burdens imposed on smaller providers by our reporting requirements outweigh the benefits of these requirements. At the same time, the Commission also asks whether access to more complete information about broadband subscribership in rural areas—areas that are often served by smaller telephone and cable companies—might enable us to better fulfill the congressional directive to assess the state of deployment of broadband services to all Americans. The Notice expressly states the Commission's desire and intention to work closely with service providers, including small entities, to minimize burdens wherever possible, particularly

for smaller providers that may have limited resources.

#### *VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

49. None.

#### *VII. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

50. None.

#### **Ordering Clauses**

51. Pursuant to sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503, and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this [notice], with all attachments, is hereby [adopted].

52. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Second Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

#### **List of Subjects**

##### *47 CFR Parts 1 and 43*

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

##### *47 CFR Part 20*

Communications common carriers.

Federal Communications Commission.

**Shirley Suggs,**

*Chief, Publications Branch.*

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**RIN 1018–AH83**

#### **Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Chorizanthe robusta* var. *robusta* (Robust Spineflower)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.