guidelines, of a specific product it has certified.

(3) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the grantee and the Commission. A follow-up report shall also be provided within thirty days of the action taken by the grantee to correct the situation.

(4) Where concerns arise, the TCB shall provide a copy of the application file within 30 calendar days upon request by the Commission to the TCB and the manufacturer. Where appropriate, the file should be accompanied by a request for confidentiality for any material that qualifies as trade secrets. If the application file is not provided within 30 calendar days, a statement shall be provided to the Commission as to why it cannot be provided.

(h) In case of a dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. Manufacturers and designated TCBs will be afforded at least 30 days to comment before a decision is reached. In the case of a TCB designated or recognized, or a product certified pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party, the Commission may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB. The Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with under the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–61; FCC 98–347]

Implementation of the Rate Integration Requirement of the Communications Act, Petitions for Forbearance

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: By this Memorandum Opinion and Order (Order), the Commission reaffirms its earlier determination that the rate integration requirement of the Communications Act apply to interstate, interexchange services offered by commercial mobile radio service (CMRS) providers, and therefore denied the petitions for reconsideration of that determination. The Commission clarified that CMRS traffic within a major trading area (MTA)(intra-MTA traffic) is not ''interexchange'' traffic and thus not subject to the rate integration requirements of section 254(g). The Commission denied the petitions seeking forbearance from the application of rate integration to CMRS providers. This carries out the intent of Congress that providers of interstate, interexchange services offer such services at integrated rates.

EFFECTIVE DATE: March 4, 1999.

FOR FURTHER INFORMATION CONTACT: Douglas L. Slotten, Attorney, Common Carrier Bureau, Competitive Pricing Division, at (202) 418–1572 or via the Internet at dslotten@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in the matter of *Implementation of Section 254(g) of the Communications Act of 1934,as Amended, Petitions for Forbearance*, CC Docket No. 96–61, adopted December 31, 1998, and released December 31, 1998. The complete text of this *Order* is available for inspection and copying during normal business hours in the Commission's Reference Center, Room 239, 1919 M Street N.W., Washington, DC. The Order is available through the Internet at http://www.fcc.gov/Bureaus/Common__ Carrier/orders/1998/fcc98347.wp. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.), at 1231 20th Street NW., Washington, DC 20036, (202) 857–3800.

SYNOPSIS OF MEMORANDUM OPINION AND ORDER

I. Introduction

1. We address seven petitions for reconsideration or, in the alternative, petitions for forbearance, of the Commission's *Rate Integration Reconsideration Order*, Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 11,812 (1997), 62 FR 46447 (September 3, 1997) *(Rate Integration Reconsideration Order)*, in which the Commission found that the rate integration requirements of section 254(g) of the Communications Act of 1934, as amended (''Act''), apply to the interstate, interexchange services of Commercial Mobile Radio Service (''CMRS'') providers. The petitioners request that the Commission reconsider that determination. In the alternative, if the Commission finds that section 254(g) applies to CMRS providers, the petitioners request that the Commission forbear from applying section 254(g) to the interstate, interexchange services offered by CMRS providers pursuant to section 10 of the Act.

2. We also state our intent to issue a Further Notice seeking comment on issues relating to airtime and roaming charges associated with interstate, interexchange calls for which a separate charge is stated; wide-area CMRS calling plans; and the affiliation requirements that should be applicable to services subject to the rate integration requirement. Pending further rulemaking, we keep in place the Order adopted by the Commission on October 2, 1997, in which the Commission stayed the application of the requirement that providers of interstate, interexchange services integrate rates across affiliates, as well as application of rate integration requirements with respect to wide-area rate plans offered by CMRS providers. *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96–61, Order, 12 FCC Rcd 15,739 (1997) *(Rate Integration Stay Order)*.

II. Petitions for Reconsideration

3. We decline to reconsider our determination that the rate integration requirement of section 254(g) applies to CMRS providers. Section 254(g) requires that ''[a] provider of interstate interexchange services shall provide its services to subscribers in a state at rates no higher than provided to subscribers in any other state.'' The language of section 254(g) on its face unambiguously applies to all providers of interstate, interexchange services. Thus, section 254 (g) applies to the interstate, interexchange services offered by CMRS providers. If Congress had intended to exempt CMRS providers, it presumably would have done so expressly as it did in other sections of the Act. Thus, we reaffirm our earlier determinations that the rate

integration language of section 254(g) applies to all providers of interstate, interexchange services, including CMRS providers. We conclude that any reference to the existing rate integration policy by Congress or by this Commission merely identified the overarching policy under consideration, and was not intended to exempt from application of that policy any carrier or class of carriers, as the petitioning parties suggest.

4. Because the language of the statute is unambiguous and plainly applies to CMRS providers, we need not examine the legislative history of section 254(g). Assuming, arguendo, some ambiguity in the statutory language, thus requiring an examination of the legislative history, we find nothing in that legislative history that unambiguously indicates that CMRS providers are exempted from section 254(g). The language referenced by the CMRS providers could readily be read as identifying the policy to be applied to all providers of interstate, interexchange services as reasonably as it could be read to suggest the codification of rate integration as applied to the wireline industry.

5. Similarly, we reject the argument raised by AirTouch that Congress did not intend rate integration to apply to CMRS providers because rate integration is unnecessary to achieve the policy goals underlying section 254(g). AirTouch states that rate integration is designed to enable subscribers in rural and offshore areas to obtain some of the benefits of rate decreases created by competitive pressures on access charges and long-distance rates in more urban areas, and to protect customers in those areas from bearing the full burden of higher local exchange costs. AirTouch appears to conflate rate integration with rate averaging. Rate averaging, which is also required by section 254(g), does have the described effect of protecting customers in high cost local exchange areas from bearing the full burden of those costs. Rate integration, on the other hand, generally focuses on the distance-sensitive aspects of the rate structures for interexchange services. It protects noncontiguous parts of the United States, such as Alaska and Hawaii, from being discriminated against because they are not part of the contiguous 48 states. AirTouch's focus on exchange cost differences is, therefore, misplaced and we disagree with its interpretation of the statute.

6. Although CMRS providers may be characterized as providers of exchange and exchange access services, that characterization does not preclude a finding that some of a CMRS provider's service offerings are interstate, interexchange services. While CMRS providers do not pay access charges for originating or terminating local exchange calls, CMRS providers do pay access charges when an interexchange call originates or terminates on landline facilities. Similarly, that, in some instances, CMRS providers are regulated in a manner different from other carriers, does not compel a conclusion that the interstate, interexchange services of CMRS providers are not subject to the rate integration requirements of section 254(g).

7. We also reject the argument that applying section 254(g) to CMRS providers is inconsistent with section 332 of the Act because it allegedly undermines the distinct deregulatory paradigm applicable to CMRS providers. Bell Atlantic Mobile asserts that the price regulation required by section 254(g) is precisely that which the Commission and Congress have deemed unnecessary and harmful to the public interest in the CMRS context. Section 332(c), however, expressly provides that sections 201 and 202 of the Act shall continue to apply to CMRS providers. Section 201(b) requires just and reasonable rates and 202(a) prohibits rates that are unreasonably discriminatory. These requirements necessarily imply some degree of regulatory concern with prices; section 332 cannot, therefore, be read to bar every form of oversight over CMRS rates. Furthermore, the rate integration policy codified in section 254(g) derived from section 202(a) the requirement that rates not be unreasonably discriminatory. Finally, we note that other provisions of Title II of the Act apply to CMRS providers. For example, the interconnection requirements of section 251(a) clearly apply to CMRS providers; CMRS providers are as capable as any other carrier of invoking the protections of section 253; and, CMRS providers are among the providers of interstate services who are required to make universal service contributions pursuant to section 254(d). Thus, we conclude that the application of section 254(g) to CMRS providers is not inconsistent with section 332.

8. We find unpersuasive the argument that, because we held that CMRS rates did not have to be integrated with the rates of affiliated long-distance providers, we did not intend rate integration to apply to CMRS providers. Rather, that decision addresses the issue of how rate integration should be applied to different interstate, interexchange services, and was consistent with the long-standing Commission practice of applying rate integration on a service-by-service basis. That decision does not address the question of whether rate integration should apply to CMRS providers at all. Similarly, CMRS providers' exemption from the equal access requirements applicable to incumbent LECs does not, as some CMRS providers suggest, address whether CMRS providers provide interstate, interexchange services and thus whether rate integration should apply to CMRS providers.

9. Several petitioners allege that the Commission gave inadequate notice to permit application of section 254(g) to CMRS providers. As we stated in the *Rate Integration Stay Order,* we do not agree that inadequate notice was given to hold that the rate integration requirements of section 254(g) apply to CMRS providers. The language of section 254(g) applies to providers of interexchange telecommunications services with no exceptions enumerated. Elsewhere in the Act, as we noted above, when Congress wanted to exempt CMRS providers from a requirement of the Act, it did so expressly. The words of the statute clearly encompass CMRS providers and legally obligate them to integrate their interstate, interexchange services. Our rule, implementing section 254(g), merely reiterated the precise terms of the statute. Further, we note that in *Policy and Rules Concerning the Interstate, Interexchange Marketplace,* Notice of Proposed Rulemaking, CC Docket No. 96–61, 11 FCC Rcd 7141 (1996), 61 FR 14717 (April 3, 1996), we stated that an interexchange call includes all means of connecting two points, ''wireline or wireless.'' Specific notice of our intent to apply the plain language of the statute was not required. We, therefore, find no relevant lack of notice regarding the application of rate integration requirements to providers of CMRS services.

10. Our conclusion that adequate notice was given of the application of section 254(g) to CMRS providers is not altered by the fact that no party commented on the application of rate integration to CMRS providers. As noted above, section 254(g), by its own terms, applies to providers of interexchange services. CMRS providers, therefore, should have been on notice that the rulemaking proceeding could affect their interests. Although rate integration had not previously been applied to CMRS providers, the CMRS industry had been subject to the rate regulation of section 202(a) of the Act and, thus, the industry should have been alert to the broad scope of section 254(g), which has its origins in section 202(a).

Moreover, section 254(g) was enacted as part of the 1996 Act; therefore, the application of that section to the CMRS industry does not represent a change in Commission policy requiring more specific notice. Finally, we conclude that because we only codified the language of section 254(g), we find no issue concerning the adequacy of the record to support adoption of the rule.

11. In any event, we find that the present reconsideration record supports the conclusion that section 254(g) applies to CMRS providers. We note that we stayed application of the affiliation requirement and application of rate integration to wide-area plans, the two cases in which we believe we would benefit from a fuller record. We continue to believe a fuller record on these two issues would be beneficial and, therefore, will seek further comment on those issues to develop a better record in a separate proceeding.

12. AirTouch notes that CMRS carriers are not mentioned in the regulatory flexibility analysis assessing the administrative burden of regulations on industry, and asserts that this reflects a lack of intent that section 254(g) be applied to CMRS providers. While the Final Regulatory Flexibility Act analysis in the *Rate Integration Order, Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended,* CC Docket No. 96–61, Report and Order, 11 FCC Rcd 9564 (1996), 61 FR 42558 (August 16, 1996) (*Rate Integration Order*), did not assess the administrative burden of regulations on CMRS providers, as AirTouch indicates, the omission does not evidence a lack of intent to apply section 254(g) to CMRS providers. We have prepared a Supplemental Final Regulatory Flexibility Act analysis to redress our inadvertent oversight. No party has claimed that the omission caused material harm. Indeed, in the Rate Integration Stay Order, we stayed application of the rate integration requirement to wide-area plans and across affiliates. Accordingly, those requirements had no impact on small entities.

13. We conclude that treating intra-MTA (major trading area) calls as not being subject to rate integration is consistent with the definition of ''telephone exchange service.'' The Act defines ''telephone exchange service'' as ''service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area * * * and which is covered by the exchange service charge, or * * * comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.'' 47 U.S.C. 153(47). In *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96–98, First Report and Order, 11 FCC Rcd 15499, 15998–16000 (1996), 61 FR 45476 (August 29, 1996) (*Local Competition Order*), *Order on Reconsideration,* 11 FCC Rcd 13042 (1996), 61 FR 52706 (October 8, 1998), *vacated in part sub nom. Iowa Utils. Bd.* v. *FCC,* 120 F.3d 753 (8th Cir. 1997), *cert. granted sub nom. AT&T Corp.* v. *Iowa Utils. Bd.,* 118 S.Ct. 879 (1998), we concluded that cellular, broadband PCS, and covered SMR providers fall within at least the second part of this definition because they provide ''comparable service'' to telephone exchange service. Our determination was based on the finding that, as a general matter, CMRS carriers provide local, two-way switched voice service as a principal part of their business. Cellular and PCS providers, however, are not LECs, as that term is defined in section 3(26) of the Act. Treating intra-MTA CMRS calls as local also is consistent with our conclusion in the *Local Competition Order,* 11 FCC Rcd 16,014, that MTAs defined the area in which reciprocal compensation applies to interconnections between incumbent LECs and CMRS providers. Because of the mobility of CMRS customers, the MTA, rather than a smaller area, such as the CMRS provider's license area or a wireline exchange area, reflects the minimum area in which customers may be expected to travel and within which they would expect not to pay toll charges. Pursuant to this approach, calls within an MTA that would be interstate will not be treated as interexchange.

14. We provide two further clarifications that follow from the finding that traffic that originates and terminates within an MTA does not constitute interexchange service. First, we clarify that when a customer is roaming, a call within the MTA of the roamed upon CMRS provider is not ''interexchange.'' This clarification ensures that intra-MTA calls are not ''interexchange'' service, thus triggering rate integration, regardless of the location of the customer. Second, we clarify that when a CMRS provider performs only an exchange access function, and an unaffiliated interexchange carrier transports and bills for the call to a destination in a different state outside the MTA, that exchange access function is not ''interstate, interexchange'' for purposes of section 254(g). We conclude that this clarification is necessary to ensure that our treatment here is akin to our treatment of incumbent LEC access charges, which are not required to be integrated.

15. Several CMRS providers seek clarification or reconsideration of the application of rate integration to roaming and airtime charges. We plan to seek additional comment on these issues in a Further Notice. Two additional sets of issues remain: (1) The treatment of wide-area calling plans; and, (2) the affiliation requirements applicable to CMRS providers for purposes of determining compliance with rate integration. We will resolve these issues on the basis of the more complete record developed in response to the Further Notice.

III. Petitions for Forbearance

16. The petitions for forbearance generally request that we forbear from applying the rate integration provisions of section 254(g) to interstate, interexchange services offered by CMRS providers, if the Commission concludes that section 254(g) applies to those services. Section 10(a) of the Act sets forth a three-part standard to be applied in addressing petitions for forbearance: a carrier may petition the Commission for forbearance from any statutory provision or regulation, and the Commission shall grant such petition if it determines that: (1) Enforcement of the requirement is not necessary to ensure that rates are just and reasonable, and are not unjustly and unreasonably discriminatory; (2) the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. Section 10(b) further provides that the Commission ''shall consider whether forbearance from enforcing the regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.'' As fully discussed below, we conclude that the petitioners have not met the standard for the grant of forbearance and, for this reason, we must deny their petitions.

17. We conclude that the petitioners have not met their burden with respect to the first and second prongs of the forbearance standard. We are concerned that, without rate integration, CMRS providers would, when consistent with their economic interests, discriminate against the offshore points. Our concerns are not eliminated by the CMRS providers' claims that CMRS rates are falling, or that PCS rates are

lower than cellular rates. Similarly, CMRS providers' few cited anecdotal instances of the offering of rates that comply with the rate integration requirement of section 254(g) do not ensure that such rates will be offered by all CMRS providers in the future. Moreover, although CMRS providers contend generally that rate integration would interfere with competition, resulting in less consumer choice, we find no specific persuasive arguments on this record to support those contentions.

18. Specifically, we find that the petitioners have not shown that, in the absence of rate integration, CMRS rates will be just and reasonable and not unjustly or unreasonably discriminatory. Indeed, we conclude that rate integration is necessary to ensure that nondiscriminatory charges and practices are offered with respect to CMRS services to and from the offshore points. Moreover, as noted by Alaska, even if rate integrated service plans are available in all parts of the United States, nothing in the record suggests that the existence of the rate integration requirement is not a significant cause of that condition. We also agree that there is no evidence to show that rate integration is not necessary for the protection of consumers. Alaska notes, for example, that Bell Atlantic Mobile's argument that consumers benefit from its plan offering one long-distance rate is misplaced because Bell Atlantic Mobile does not offer service to subscribers in Alaska and Hawaii. Thus, although the cost to a Bell Atlantic Mobile customer calling Alaska or Hawaii might be the same as the cost of a call elsewhere in the continental United States, that fact does not protect the interests of consumers in Alaska or Hawaii because they generally would not be paying the long distance charges.

19. We also agree with Hawaii and Alaska that a broad grant of forbearance would not be consistent with the public interest, as required by the third prong of the forbearance standard. The public interest here, as reflected by the inclusion of CMRS providers in section 254(g), is the integration of offshore points into the interexchange rate patterns of CMRS services to prevent discrimination against those locations. Therefore, in order to satisfy the public interest, CMRS providers must explain how the benefits of section 254(g) can be attained if we forbear from applying the rate integration requirement of section 254(g) to the interstate, interexchange services of CMRS providers. We conclude that the petitioners have not made the required demonstration.

20. The argument against forbearance is particularly compelling with respect to separately-stated long distance charges. Many CMRS providers offer service plans that include a toll charge assessed for a long-distance call that is separate from the airtime charge. When the CMRS provider provides the link to the distant location, either through its own facilities or through the resale of a long-distance provider's service, and bills separately for that service, we find that the CMRS provider is providing an interexchange service. If that call terminates in a state different from the state in which the call originates, the service is an interstate, interexchange service covered by the rate integration requirement of section 254(g).

21. We conclude that it would not be consistent with just and reasonable rates, the protection of consumers, and the public interest to forbear from applying the rate integration requirement of section 254(g) to separately-stated toll charges for interstate, interexchange services provided by CMRS providers. For separately stated CMRS toll charges, we do not see how the policy considerations regarding rate integration differ materially from those in the non-CMRS context. Applying rate integration of separately-stated toll charges appears to be at the heart of the congressional policy of section 254(g)), which was enacted despite the existence of multiple interexchange carriers.

22. Pursuant to section 10(b), we also have considered whether forbearance from enforcing the rate integration requirement of section 254(g) will promote competitive market conditions. Although CMRS providers contend that rate integration would interfere with competition, we find no persuasive record evidence to support that contention or, conversely, that competitive conditions will be promoted in the absence of rate integration. Moreover, we agree that forbearance from rate integration cannot be justified on competitive conditions alone. Hawaii correctly notes we have previously rejected this argument. Prior to the enactment of section 254(g), we already had determined that all IXCs were non-dominant in the domestic market and had found that most major segments of the interexchange market were subject to substantial competition. Nothing suggests that Congress was unaware of the state of competition in the interexchange market in enacting section 254(g). Indeed, we find that Congress's enactment of section 254(g), even after the Commission's determination that major segments of the interexchange market were subject to substantial competition, establishes the importance Congress placed on a nationwide policy of rate integration that was applicable to all providers of interstate, interexchange services.

23. Contrary to the assertions of several CMRS providers, our finding in *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, GN Docket No. 93–252, 9 FCC Rcd 1411 (1994), 59 FR 18493 (April 14, 1994) (*CMRS Forbearance Order*), that there was sufficient competition in the CMRS market to justify forbearance from, *inter alia*, the tariffing requirements of section 203–205, do not require forbearance with respect to section 254(g). The *CMRS Forbearance Order*, adopted pursuant to section 332, primarily addressed the tariff filing requirement and its competitive implications. The rate integration requirement of section 254(g) creates a substantive pricing requirement which raises different competitive considerations than do tariff requirements. Moreover, section 332(c), by its terms, prohibits forbearance from application of section 202(a) to the CMRS industry. We note that 254(g) has its origins in section 202(a). Accordingly, we find that our forbearance in the tariffing context has no relevance to the question of forbearance here.

24. In sum, we conclude that the petitioners have not demonstrated that forbearance from applying the rate integration requirements of section 254(g) is consistent with just and reasonable or not unjustly or unreasonably discriminatory rates in the CMRS context, the protection of consumers, and the public interest. Similarly, we have not found that forbearance from enforcing the rate integration requirement of section 254(g) would promote competitive market conditions. Accordingly, we cannot grant the forbearance requests. In a separate proceeding, we will seek further comment on ways in which the rate integration requirement of section 254(g) should be applied to CMRS offerings. The expanded record evidence about the nature of CMRS services and the ownership arrangements within the industry will permit us to more fully evaluate rate integration in the CMRS context, develop rules specific to CMRS services, or, if appropriate, forbear in some instances.

25. The forbearance petitions generally sought forbearance from the application of rate integration to all interstate, interexchange services

offered by CMRS providers. In addition, several CMRS providers argue that, if we do not forbear totally from applying rate integration to interstate, interexchange offerings of CMRS providers, we should apply rate integration only to services for which the long-distance charges are separately billed. We conclude that the present record does not establish that the forbearance standard of section 10 of the Act has been met with respect to this matter. For example, the record does not establish that forbearance would be consistent with the public interest. In addition, the record does not provide sufficient information to determine whether certain types of airtime or roaming charges, or some wide-area calling plans, fall within the definition of interexchange services to which rate integration would apply; and, how different affiliation requirements would affect the CMRS industry. We seek comment on these issues in a separate rulemaking proceeding that will permit us to develop rules specific to CMRS services. Accordingly, we deny the remaining requests of the petitions for forbearance as inconsistent with just and reasonable rates or not unjustly or reasonably discriminatory rates; the protection of consumers; and the public interest.

IV. Ordering Clauses

26. Accordingly, *It is ordered*, that the Petitions for Reconsideration filed by AirTouch Communications, Cellular Telecommunications Industry Association, PrimeCo Personal Communications, L.P., Personal Communications Industry Association, Telephone and Data Systems, Inc., BellSouth Corporation, and Bell Atlantic Mobile, Inc. *Are denied to the extent indicated herein.*

27. *It is further ordered* that the Petitions for Forbearance filed by AirTouch Communications, Cellular Telecommunications Industry Association, PrimeCo Personal Communications, L.P., Personal Communications Industry Association, Telephone and Data Systems, Inc., BellSouth Corporation, and Bell Atlantic Mobile, Inc. Are denied.

28. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Memorandum Opinion and Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Supplemental Final Regulatory Flexibility Act Analysis

29. As required by the Regulatory Flexibility Act (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Rate Integration and Rate Averaging Notice* in this docket. The Commission sought written public comment on the proposals in the *Rate Integration and Rate Averaging Notice*, including comment on the IRFA. The Commission prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact the *Rate Integration Order* might have on small entities. The FRFA did not, however, analyze the possible significant economic impact the Rate Integration Order might have on CMRS providers that were small entities. The Commission has prepared this supplemental FRFA of the possible significant economic impact the *Rate Integration Order* might have on CMRS providers that are small entities, in conformance with the RFA.

A. Need for and Objectives of Rules

30. In the 1996 Act, Congress directed the Commission to develop rules implementing the provisions of section 254(g) within six months of its enactment. The Commission adopted rules implementing the provisions of section 254(g) in the *Rate Integration Order*. The objective of these rules is to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers.

B. Summary of Significant Issues Raised by the Public Comments to the IRFA

31. The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. No comments were submitted directly in response to the IRFA. We have, however, kept small entities in mind as we considered the more general comments filed in this proceeding, as discussed below.

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

32. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

(a) *Cellular Radio Telephone Service*

33. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the 1992 census, which is the most recent information available, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions in this Supplemental FRFA, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

(b) *Broadband Personal Communications Service*

34. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to § 24.720(b) of the Commission's Rules, the Commission has defined ''small entity'' for Block C and Block F licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.

35. The Commission has auctioned broadband PCS licenses in all of its spectrum blocks A through F. We do not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the Block C auction

and 93 non-defaulting winning bidders that qualify as small entities in the D, E, and F Block auctions. Based on this information, we conclude that the number of broadband PCS licensees that would be affected by the evaluations and conclusions in this Supplemental FRFA includes the 183 non-defaulting winning bidders that qualify as small entities in the C, D, E, and F Block broadband PCS auctions.

(c) *Specialized Mobile Radio*

36. Pursuant to Section 90.814(b)(1) of the Commission's Rules, the Commission has defined ''small entity'' for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of no more than $15 million in the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.

37. The section 254(g) requirements apply to SMR providers in the 800 MHz and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, nor how many of these providers have annual revenues no more than $15 million.

38. 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 under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by section 254(g) includes these 60 small entities.

39. A total of 525 licenses were auctioned for the upper 200 channels in the 800 MHz geographic area SMR auction. There were 62 qualifying bidders, of which 52 were small businesses. The Commission 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 to estimate, moreover, how many small entities within the SBA's definition will win these lower channel licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz SMR licensees can be made, we assume, for purposes of our evaluations and conclusions in this Supplemental FRFA, that all of the licenses for the lower 230 channels will be awarded to small entities, as that term is defined by the SBA.

(d) *220 MHz Service*

The Commission has classified providers of 220 MHz service into Phase I and Phase II licensees. There are approximately 2,800 non-nationwide Phase I licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission recently conducted the Phase II auction. There were 54 qualified bidders, of which 47 were small businesses.

41. At this time, however, there is no basis upon which to estimate definitively the number of phase I 220 MHz service licensees that are small businesses. To estimate the number of such entities that are small businesses, we apply the definition of a small entity under SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the 1992 Census, which is the most recent information available, only 12 out of a total 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees—and these may or may not be small entities, depending on whether they employed more or less than 1,500 employees. But 1,166 radiotelephone firms had fewer than 1,000 employees and therefore, under the SBA definition, are small entities. However, we do not know how many of these 1,166 firms are likely to be involved in the phase I 220 MHz service.

(e) *Mobile Satellite Services (MSS)*

42. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is 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, NEC in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million.

43. Mobile Satellite Services or Mobile Satellite Earth Stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub or stations. The stations that are capable of transmitting while a platform is moving are included under Section 20.7(c) of the Commission's Rules as mobile services within the meaning of Sections 3(27) and 332 of the Communications Act. Those MSS services are treated as CMRS if they connect to the Public Switched Network (PSN) and also satisfy other criteria of Section 332. Facilities provided through a transportable platform that cannot move when the communications service is offered are excluded from Section 20.7(c).

44. The MSS networks may provide a variety of land, maritime and aeronautical voice and data services. There are eight mobile satellite licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees.

(f) *Paging Service*

45. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the paging service. A small business is defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The SBA has approved this definition for paging companies.

46. The Commission estimates that the total current number of paging carriers is approximately 600. In addition, the Commission anticipates that a total of 16,630 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 2,550 Major Trading Area (MTA) licenses and 14,080 Economic Area (EA) licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses have been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that no reliable estimate of the number of paging licensees can be made, we assume, for purposes of this Supplemental FRFA, that all of the current licensees and the 16,630 geographic area paging licensees either are or will consist of small entities, as that term is defined by the SBA.

(g) *Narrowband PCS*

47. The Commission has auctioned nationwide and regional licenses 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. At present, there have been no auctions held for the MTA and Basic Trading Area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licensees and 2,958 BTA licensees will be awarded in the auctions. Those auctions, however, have

not yet been scheduled. Given that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, that all of the licensees will be awarded to small entities, as that term is defined by the SBA.

(h) *Air-Ground Radiotelephone Service*

48. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's rules. 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 under the SBA definition.

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

49. In the *Rate Integration Order,* and the *Rate Integration Reconsideration Order,* we determined that section 254(g) applied to interstate, interexchange services offered by CMRS providers. We expect that those orders impose no significant new reporting or recordkeeping requirements on CMRS providers. Those orders, however, require CMRS providers to comply with the rate averaging and rate integration requirement of section 254(g) in their service offerings. CMRS providers, however, do not file tariffs except on some international routes.

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

50. Section 254(g) reflects a congressional determination that the country's higher-cost, lower-volume markets should share in the technological advances and increased competition characteristic of the nation's telecommunications industry as a whole, and that interexchange rates should be provided throughout the nation on a geographically averaged and rate-integrated basis. We have decided that the statutory objectives of section 254(g) require us to apply our rules to all providers of interexchange service, including small ones. We have chosen, however, to allow carriers to offer private line service and temporary promotions on a de-averaged basis. In so doing, we have minimized the impact our rules might otherwise have had, and enable carriers to use such devices to enter new markets.

51. In addition, the Commission considered reducing the burdens on small carriers by exempting them from compliance through forbearance. However, we do not believe that forbearing at this time would be consistent with the Congressional goals that underlie Section 254(g). We could also have reduced burdens on small carriers by establishing cost-support mechanisms. However, the present record does not justify any such cost-support mechanisms. Accordingly, we decline to adopt these alternative measures for small carriers.

F. Report to Congress

52. The Commission will send a copy of this order, including the supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. A summary of this Memorandum Opinion and Order and this Supplemental FRFA will also be published in the **Federal Register**, and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

U.S. Agency For International Development

48 CFR Parts 705, 706, 709, 716, 722, 731, 732, 745, 747, and 752

[AIDAR Notice 98–3]

RIN 0412–AA39

Miscellaneous Amendments to Acquisition Regulations

AGENCY: U.S. Agency for International Development (USAID), IDCA.

ACITON: Final rule.

SUMMARY: The USAID Acquisition Regulation (AIDAR) is being amended to bring its organizational conflicts of interest coverage into conformance with the FAR; to implement the August 19, 1997 revisions to Office of Federal Contract Compliance Programs (OFCCP) regulations (41 CFR Parts 60–1, 60–60) and corresponding amendments to FAR Subpart 22.8 contained in Federal Acquisition Circular 97–10, effective in February 1999; to allow for advances to for-profit organizations who award grants under their contracts; to clarify the application of USAID's salary policy to fixed-price contracts; and to update corresponding clauses in Part 752, as needed. The AIDAR is also being amended to incorporate provisions of various Contract Information Bulletins (CIBs) issued in the past few years that established contracting policies or procedures, and to make administrative changes or corrections.

EFFECTIVE DATE: March 4, 1999.

FOR ADDITIONAL INFORMATION CONTACT: M/OP/P, Ms. Diane M. Howard, (202) 712–0206.

SUPPLEMENTARY INFORMATION: The specific changes being made to the USAID Acquisition Regulation (AIDAR) in this amendment are:

A. Contract Information Bulletin 91–3 provided the written authorization of the Procurement Executive, as the Head of the Agency and as required by FAR 5.502(a), to USAID Contracting Officers to place advertisements and notices in newspapers and periodicals. We are formally incorporating that authorization into the AIDAR at new section 705.502.

B. In January 1997, FAC 90–45 removed the Conflict of Interest clauses at FAR sections 52.209–7 and 52.209–8. Because AIDAR sections 709.507–2 and 752.209–71 make reference to these FAR clauses, both sections are amended to remove the references and to reflect the current FAR language.

C. USAID decided to codify an award fee clause in the AIDAR, in accordance with FAR 16.406(e), rather than establish a procedure for review and approval of individual clauses. Already in use through CIB 97–12, the new clause at 752.216–70 is purposefully minimalist and resembles FAR 52.216–8, Fixed Fee, rather than FAR 52.216–10, Incentive Fee. This approach gives Contracting Officers the flexibility to design their own award fee evaluation methods and specify the implementation details elsewhere in the contract schedule.

D. In CIB 97–26, USAID implemented on an interim basis the revisions in EEO compliance procedures made by the Department of Labor to their regulations (41 CFR Ch. 60) in 1997 (62 FR 44173). On December 18, 1998, the FAR Councils published FAC 97–10 (63 FR 70264), containing a Final Rule at Item III entitled ''Office of Federal Contract Compliance Programs National Pre-Award Registry'' to implement the DOL changes into the FAR. AIDAR Subpart 722.8 is revised to reflect the FAR revisions in 48 CFR 22.8 (i.e., for other than construction contracts, the increase in the threshold for OFCCP verification from $1,000,000 to $10 million and the availability of OFCCP's National Pre-Award Registry), and to clarify and simplify the internal Agency procedures