the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates.* A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–181 to read as follows:

§ 165.T01–181 Safety Zone: Sciame Construction Fireworks, East River, Manhattan, New York.

(a) Location. The following area is a safety zone: All waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′08″ N 074°00′06″ W (NAD 1983), approximately 250 yards east of Pier 14, Manhattan, New York.

(b) *Effective period.* This section is effective from 6:30 p.m. until 8 p.m. on Thursday, December 9, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: November 2, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard Captain of the Port, New York.

[FR Doc. 99–29309 Filed 11–8–99; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–54, WT Docket No. 98–100, GN Docket No. 94–33; FCC 99–250]

Interconnection and Resale Obligations in the Commercial Mobile Radio Services and Forbearance Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration.

SUMMARY: This document generally affirms the Commission's earlier decision in this proceeding to extend the cellular resale rule to include certain broadband personal communications service (PCS) and specialized mobile radio providers and to sunset the rule as of November 24, 2002. However, this document modifies the previous decision by removing customer premises equipment (CPE) and CPE in bundled packages from the scope of the resale rule, by revising the scope of the resale rule to exclude all C, D, E, and F block PCS licensees that do not own and control and are not owned and controlled by cellular or A or B block licensees, and by exempting from the rule all SMR and other Commercial Mobile Radio Services (CMRS) providers that do not utilize in-network switching facilities. This document also clarifies certain aspects of the resale rule, and denies a Petition for Reconsideration of the Commission's denial of a request for forbearance from the resale rule. The action is intended to resolve issues raised in several Petitions regarding the CMRS resale rule and forbearance.

DATES: Effective January 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration (MO&O) in CC Docket No. 94–54, WT Docket No. 98–100, and GN Docket No. 94–33; FCC 99–250, adopted September 15, 1999, and released September 27, 1999. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, DC.

Synopsis of the MO&O

1. The First Report and Order in this proceeding (61 FR 38399, July 24, 1996) promulgated a rule prohibiting certain CMRS providers from restricting the resale of their services during a transitional period. This resale rule, which previously had applied only to cellular providers, was extended to PCS and certain specialized mobile radio (covered SMR) services. The First Report and Order (First R&O) sunset this resale rule five years after the date of the award of the last group of initial licenses for broadband PCS, which the Commission subsequently determined to be November 25, 1997. (*See* Public Notice of July 2, 1998, in CC Docket No. 94–54, 13 FCC Rcd 17427, 1998.) Accordingly, the resale rule is currently set to expire at the close of November 24, 2002.

2. This Memorandum Opinion and Order on Reconsideration (MO&O) generally affirms the Commission's decisions in the First R&O to extend the cellular resale rule to include certain

broadband PCS service and SMR providers, and to sunset the rule as of November 24, 2002. However, the MO&O modifies the initial decision in three key respects. First, the MO&O removes customer premises equipment (CPE) and CPE in bundled packages from the scope of the resale rule. Second, the MO&O revises the scope of the resale rule to exclude all C, D, E, and F block PCS licensees that do not own and control and are not owned and controlled by cellular or A or B block PCS licenses. Third, the MO&O exempts from the rule all SMR and other Commercial Mobile Radio Service (CMRS) providers that do not utilize in-network switching facilities. In addition, the MO&O clarifies certain other aspects of the resale rule. Finally, the MO&O denies a Petition for Reconsideration of the Commission's denial of a request for forbearance from the resale rule filed by the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association (PCIA), pursuant to section 10(a) of the Communications Act (Act). (*See* 47 U.S.C. 160(a)(1)–(3).

3. The MO&O denies a request by several petitioners that the Commission reconsider its decision in the First R&O to extend the resale rule to broadband PCS and covered SMR providers. The Commission finds that no new arguments have been presented and that circumstances have not changed since the adoption of the First R&O in a way that would warrant elimination of the resale rule prior to the sunset date. The Commission continues to believe that, as a general matter, the benefits of the resale rule outweigh its costs during this transitional period as the marketplace becomes more competitive. These public interest benefits include: (1) Encouraging competitive pricing; (2) discouraging unjust, unreasonable, and unreasonably discriminatory carrier practices; (3) reducing the need for detailed regulatory intervention and the administrative expenditures and potential for market distortions that may accompany such intervention; (4) promoting innovation and the efficient deployment and use of telecommunications facilities; (5) improving carrier management and marketing; (6) generating increased research and development; and (7) affecting positively the growth of the market for telecommunications services. Therefore, the MO&O retains the rule with certain modifications and clarifications.

4. The MO&O also affirms the Commission's decision to terminate the resale rule at the end of the sunset period. Some petitioners argue that the Commission should refrain from sunsetting the rule at the end of the five year period because the market for cellular and substitute services is not fully competitive and will remain at this level for the foreseeable future. The MO&O finds that such petitioners fail to present any new facts or arguments to persuade the Commission that the decision to sunset the resale rule should be revised in any way. Others contend that the sunset for cellular providers was promulgated without sufficient notice because the Commission failed to indicate in the First Notice of Proposed Rulemaking (59 FR 35664, July 13, 1994) or the Second Notice of Proposed Rulemaking (60 FR 20949, April 28, 1999) that it was considering the adoption of a sunset provision for the cellular resale requirement. The MO&O rejects this position, concluding that any suggestion that the sunset provision was promulgated without sufficient notice in the Second Notice of Proposed Rulemaking is without merit. Other parties oppose the sunset provision claiming that any restriction on resale violates sections 201(b) and 202(a) of the Communications Act, unless the restricting party proves that resale would cause public harm. The MO&O disagrees with this interpretation, finding that those who support this argument have misconstrued the obligations imposed by sections 201(b) and 202(a) and that the statutory arguments are thus without merit.

5. Although the MO&O maintains the sunset of the resale rule, the Commission's decision should not be construed as a lack of commitment to ensuring compliance with the resale obligation during the period in which it is force. On the contrary, the Commission intends to take effective and expeditious action against any carrier that fails to comply with its obligations under the resale rule.

6. The Commission recognizes that, in addition to simple refusals to offer resale agreements, violations of the resale requirements may take a variety of forms, including a carrier's unreasonable refusal to offer resellers the same bundled packages of airtime and enhanced services or the same volume discounts that the carrier offers to its retailers. Thus, the Commission intends to look closely at allegations of unreasonable restrictions on resale and to resolve expeditiously complaints about whether the challenged restriction on resale is reasonable. The Commission intends to initiate a stepped up mediation program under which it will first attempt to resolve any formal or informal complaints filed by a reseller through negotiation. In those instances where the parties cannot reach agreement or where negotiation does not appear to be a viable approach, the Commission will expedite the complaint proceeding, to the fullest extent possible, in order to ascertain whether the carrier in question is acting in derogation of the resale rule requirement. In cases in which the Commission determines that a violation of the rule has occurred, it intends to impose rigorous enforcement measures, including, in appropriate cases, the revocation of licenses and the imposition of forfeiture penalties.

7. The MO&O also considers petitions requesting that the Commission reverse the decision in the First R&O that the resale rule applies to bundled packages of services such as CPE of enhanced services. The Commission finds the petitioners' argument that the Commission provided no notice to parties that the resale requirement might be extended to bundled packages but has eliminated CPE and CPE in bundled packages from the scope of the resale rule. The MO&O retains the rule, however, for bundled packages that include enhanced services, because, at least as CMRS enhanced services are presently provided, neither subscribers nor resellers can purchase the service component of the bundle from one provider and the enhanced service component of the bundle from another provider.

8. The MO&O next modifies the scope of the resale rule. The First R&O concluded that the benefits of the mandatory CMRS resale rule will continue to exceed its costs so long as mobile voice and data markets are not yet fully competitive. The MO&O relies on this cost/benefit methodology to revise tune the scope of the resale rule by eliminating from its coverage those providers or services for which analysis suggests that the rule is unnecessary.

9. First, a review of the record convinces the Commission that the benefits that might accrue as a result of imposing resale obligations on C, D, E, and F block broadband PCS licensees are outweighed, at this time, by the burdens such obligations impose on these carriers. In contrast to more established firms, no significant benefits accrue from subjecting smaller, new entrant competitors with limited network infrastructure and minimal market share to the requirements of the resale rule. The MO&O concludes that the A and B-block licensees are the more likely of the broadband PCS block licensees to have capacity to resell, whereas the C, D, E, and F block licensees have the greater need to

purchase capacity for resale, due to their relative underdevelopment. The Commission thus believes that there are benefits from subjecting A and B block licensees to the resale rule and to exempting licensees in the C, D, E, and F blocks, whose minimal development and incentive to restrict resale suggest that a resale requirement for them would be of limited, if any, utility. The Commission recognizes that many cellular and A and B block licensees also own licenses in the C, D, E, and F blocks. Therefore, the MO&O excludes from the coverage of the resale rule only those C, D, E, and F block PCS licensees that do not own and control and are not owned and controlled by firms also holding cellular, A or B block licenses.

10. Second, the MO&O considers exclusion for certain SMR providers. The First R&O limited the scope of the resale rule to SMR providers in the 800–900 MHz bands that hold geographic area licenses and offer real-time, two-way switched voice service that is interconnected with the public switched network (PSTN) and to Incumbent Wide Area SMR licensees that provide such services. On reconsideration, the Commission now concludes that its objective with respect to SMR is best achieved by limiting the resale rule to reach only those SMR providers that offer real-time two-way switched service that is interconnected with PSTN utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-off of subscriber calls. In so doing, the Commission abandons its previous criterion, which was based on a carrier's license authority, in favor of a technical and operational criterion, *i.e.*, in-network switching capacity, which more closely parallels the Commission's intention to cover only those SMR carriers that compete directly with providers of cellular service and broadband PCS. The Commission agrees with those petitioners who maintain that the definition of ''covered SMR'' adopted in the First R&O is overinclusive with respect to certain types of SMR systems. The Commission does not believe that it serves the public interest to extend the explicit rule against unreasonable resale restrictions to carriers offering only geographically or functionally limited services, such as dispatch, that are unlikely to be attractive to resellers in any event.

11. Although there may be limited practical significance to extending the exclusion for SMR systems lacking in-network switching capacity to cellular and broadband providers, the Commission concludes that they should be treated consistently with SMR providers to the extent they do not utilize an in-network switching facility or do not meet other elements of the Commission's coverage test. As in the contexts of number portability and E911, the Commission has extended its modified ''covered SMR'' definition to providers of similar service over cellular and broadband PCS spectrum as well.

12. Third, the MO&O reviews other proposed exemptions for SMR. The MO&O rejects the alternative proposal that the resale rule exclude providers or systems that serve fewer than a particular number of mobile of mobile units. The Commission believes that a definition based solely on the size of a system without regard for the types of services provided would be arbitrary and incompatible with its policy objectives. Instead, the Commission seeks to develop a definition that covers providers based on the functional nature of the service they provide.

13. The MO&O also rejects the contention of Nextel Communications Inc. (Nextel) that all SMR providers should be excluded from the requirements of the resale rule. Nextel argues that capacity restraints on SMR spectrum mandate continuing technical control over SMR systems and end users.that cannot accommodate the disjunction between the system operator and the end user that middlemen like resellers create, without significant costs to system integrity. Nextel also argues that its spectrum is highly encumbered and that the relocation is just beginning, and that an SMR provider must integrate the use of this type of spectrum with that allocated on a site-specific-basis, as well as integrating its analog services with its digital offerings. The Commission finds that these arguments have already been made and rejected in this proceeding and there is no new compelling evidence to change the Commission's earlier position. In general, the Commission finds that the problem of transitioning from analog to digital service is not unique to SMR, and that, as indicated in the First R&O, it is unclear how SMR providers would lose control over their daily operations if their services were purchased by parties intending to resell the services rather than being purchased by end users. In particular the Commission notes that Nextel is rapidly moving away from traditional dispatch service with the introduction of its four-function Direct Connect service package. While the coverage and usage demands placed on the system by this package are potentially greater than traditional dispatch, it is not clear, and Nextel does not adequately explain, why a reseller of such a package would place any greater or more unpredictable demands upon Nextel's system than Nextel itself does, in offering this service to its own retail customers. Under these circumstances, the Commission finds unconvincing Nextel's arguments against permitting a reseller to purchase Nextel's Direct Connect service package for resale, or permitting a reseller to acquire the billing data and other information necessary for traditional resale.

14. The MO&O also looks at proposed amendments to the resale rule. The MO&O first considers arguments that the resale rule should be amended to clarify that only ''unreasonable'' restrictions on resale are prohibited. The MO&O agrees with those who ask that the Commission clarify the resale rule to make the text of the rule consistent with existing Commission policy. This change in rule would clarify that the reasonableness standard continues to apply in the resale context. Accordingly, the MO&O amends the rule to prohibit only unreasonable restrictions on resale. However, the Commission does not deem it advisable to delineate in the rule itself what bases it might consider reasonable for denying resale. The MO&O also clarifies, but cannot and does not resolve definitively for each carrier, the issue of billing tapes. To the extent that electronic billing tapes are available, or could be made available without significant alterations to a carrier's billing systems, the Commission would expect that a carrier would provide access to them for a reseller as part of its responsibilities under the resale rule, and the Commission would likely find it a violation of the resale rule should the carrier fail to do so. On the other hand, carriers are not required to undertake major alterations to their billing systems to accommodate reseller requests.

15. The MO&O rejects a proposed amendment to the resale rule that would clarify that resale restrictions based on limited capacity are reasonable and are therefore permitted under the rule. As an initial matter, the MO&O notes that the First R&O indicated clearly that no provider is required to add capacity in order to accommodate a reseller. The Commission does add, however, that virtually all CMRS carriers are adding capacity to their systems in one form or another, as this is a rapidly growing market, and, in that sense, all could claim to be facing capacity restraints to a certain degree. Obviously, a generalized assertion of capacity limitations, where capacity is actively being brought on line and service is being aggressively marketed to retail

customers (including high volume customers), would not provide an adequate basis to deny service to resellers. Beyond this, the Commission declines to make a blanket determination as to what capacity limitations or evidence thereof might constitute reasonable grounds to restrict resale.

16. AT&T Corporation (AT&T) seeks an exemption from the resale rule for data services providers using cellular or broadband PCS spectrum. It points out that such services are presently subject to the resale rule, whereas data service offered by SMR providers are exempt, that such disparate treatment is inequitable and that a comparable exemption should be created for data services provided by cellular and PCS carriers. Upon reconsideration, the Commission reiterates its position in the First R&O that it would be imprudent to distinguish between data services and other services offered using CMRS spectrum and extends the rule to cover SMR as well as another CMRS data services. The MO&O also dismisses arguments that the resale rule should not be applied to data services because the data services market is nascent and no carrier has a competitive advantage.

17. With respect to SMR services, the Commission now concludes that excluding data services from the resale rule would likely create enforcement problems because it can be difficult to determine, as an enforcement matter, whether a carrier is offering voice or data services over digital transmission facilities. Thus, the Commission extends the resale rule to data services offered using SMR spectrum to the same extent that it applies to voice services. The MO&O determines to apply the resale rule to providers of real-time, two-way switched data service that is interconnected with the PSTN and that is offered over cellular, broadband PCS, or SMR spectrum utilizing an in-network switching facility.

18. The MO&O dismisses a request that the Commission clarify that the resale rule does not require unrestricted resale of services that include proprietary technologies and products. Supporters of such a clarification maintain that a resale requirement would reduce the incentive for carriers to innovate by diminishing the competitive advantages yielded by their investment. Absent a more focused showing on this issue, the Commission declines to adopt a general ''proprietary technology'' exception to the resale rule, which would likely prove difficult, and unnecessarily burdensome to administer during the remaining three-year life of the rule.

19. The Commission emphasizes that under the CMRS resale rule, a carrier is not required to offer a reseller wholesale prices or special packages or configurations of services tailored to the reseller's demands, but only to allow a reseller to purchase, at non-discriminatory prices, those services that the carrier is offering to its own retail customers. The MO&O concludes that were the Commission to allow carriers to restrict resale of services that include proprietary technologies before sufficient competition develops, the exception could severely restrict the opportunities for resale. The MO&O reiterates the position taken in the Forbearance Memorandum Opinion and Order (Forbearance M&O) (63 FR 43033, August 11, 1998) that ''the obligation to permit resale [does not] significantly discourage facilities-based carriers from innovating in a market that has not achieved sufficient competition.''

20. The MO&O considers a Petition for Reconsideration of the Forbearance MO&O, filed by the Personal Communications Industry Association (PCIA). PCIA maintains that the resale rule should be sunset immediately for all CMRS providers. PCIA contends that forbearance from the CMRS resale rule is consistent with the three prongs of the forbearance test, and that the record does not contain the evidentiary support required by the Administrative Procedure Act (APA) to sustain the Commission's conclusions concerning the costs and benefits of imposing a resale rule or its determination to deny PCIA's request for forbearance from the rule.[1]

21. The MO&O dismisses PCIA's request, finding that the present approach provides a necessary degree of flexibility for disposing of market-specific forbearance requests, both with respect to the parameters of the market and the criteria indicative of adequate competition. It would be difficult to establish a meaningful bright-line test to be applied across the board in all forbearance proceedings. Furthermore, the near-term sunset of the rule provides an additional reason to retain the present market-by-market approach to forbearance requests respecting resale.

[1] Section 10 of the Communications Act (47 U.S.c. 160) requires forbearance if the Commission determines that (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.

Administrative Matters

Supplemental Final Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act, 5 U.S.C. 604 (RFA),[2] a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the First Report and Order issued in this proceeding. The Commission's Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) in this Memorandum Opinion and Order on Reconsideration and Order Denying Petition for Forbearance (Order on Reconsideration) contains information additional to that contained in the FRFA and is limited to matters raised on reconsideration with regard to the First Report and Order and addressed in this Order on Reconsideration. This Supplemental FRFA conforms to the RFA.

I. Need for and Purpose of This Action

23. By resolving the pending petitions for reconsideration or clarification of the First Report and Order, the actions taken in this Order on Reconsideration will affirm and clarify the Commission's CMRS resale policy, which is intended to help bring the benefits of competition to the market for these services while the market is in transition to a fully competitive state. In addition, the Commission's resale policy is intended to help promote competition by allowing new entrants to enter the marketplace quickly by reselling their competitors' services during the time needed to construct their own facilities.

II. Summary of Significant Issues Raised by the Public in Response to the Final Regulatory Flexibility Analysis

24. No petitions for reconsideration were filed in direct response to the FRFA. In petitions for reconsideration or clarification, however, and in responsive pleadings, as well, some issues were raised that might affect small entities. Specifically, some commenters argued that the term covered SMR should be limited to systems that have an in-network switching facility or that serve at least a minimum number of mobile units, *e.g.*, at least 100,000 mobile units that provide real-time, two-way interconnected voice services or that serve at least 20,000 or more subscribers nationwide.

[2] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With American Advancement Act of 1996, Public Law. 104–121, 11 Stat. 847 (1996) (CWAA). Title II of CWAA is the Small Business Regulatory Enforcement Fairness act of 1996 (SBREFA).

25. Several other commenters contended, however, that the number of units served bears no necessary relation to the purposes of limiting SMR coverage and that coverage should be determined based on services that compete with SMR providers. Other commenters contended that SMR systems should be subject to the same rules as cellular and broadband PCS in order to preserve regulatory parity in the CMRS market, and that, if small SMR systems are excluded from the rule, small cellular and broadband PCS systems should also be excluded.

III. Description and Estimates of the Number of Entities Affected by This Order on Reconsideration

26. 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. (*See* 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the term ''small business.'' (*See* 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[3] 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). (Small Business Act, 15 U.S.C. 632 (1996).

27. *SMR Licensees.* The Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. This small business size standard for the 800 MHz and 900 MHz auctions has been approved by the SBA. The rule amendment adopted in this Order on Reconsideration affects geographic and wide area SMR providers that were not previously subject to the resale rule because they do not offer real-time, two-way PSTN-interconnected voice service. Such SMR providers will now be subject to the CMRS resale rule if they offer real-time, two-way voice or data service that is interconnected with the public switched network, provided they use an in-network switching facility.

28. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. We conclude that the number of 900 MHz SMR geographic area licensees affected by this rule modification is at least 60.

29. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. It is not possible to determine which of these licensees were not covered by the previous rule but intend to offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the upper 200 channels affected by this rule modification is at least ten.

30. The Commission has determined that 3325 geographic area licenses will be awarded in the 800 MHz SMR auction for the lower 230 channels. Because the auction of these licenses has not yet been conducted, there is no basis to estimate how many winning bidders will qualify as small businesses under the Commission's $15 million size standard. Nor is it possible to determine which of these licensees would not have been covered by the previous rule but will offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the lower 230 channels that may ultimately be affected by this rule modification is at least 3325.

31. With respect to licensees operating under extended implementation authorizations, approximately 6800 such firms provide 800 MHz or 900 MHz SMR service. However, we do not know how many of these were not covered by the previous rule but intend to offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility or which of this subset qualify as small businesses under the $15 million size standard. We assumed, for purposes of the FRFA, and continue to assume for purposes of this Supplemental FRFA, that all of the remaining existing authorizations are held by licensees qualifying as small businesses under the $15 million size standard. Of these, we assume, for purposes of our evaluations and conclusions in this Supplemental FRFA, that none of these licensees was covered by the previous rule but that all of them intend to offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility. Therefore, we conclude that the number of SMR licensees operating in the 800 MHz and 900 MHz bands under extended implementation authorizations that may be affected by this rule modification is up to 6800.

32. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Trends in Telephone Service data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the policies adopted in this Order on Reconsideration.

33. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than

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

$15 million for the preceding three calendar years. 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 percent of the 1,479 licenses for Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will total 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

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

34. Neither the rule adopted in the First Report and Order nor the rule modifications adopted in the Order on Reconsideration impose a reporting or recordkeeping requirement. The resale rule does, however, operate as a negative prohibition forbidding restrictions on the resale of covered services. The only compliance costs likely to be incurred, as a result, are administrative costs to ensure that an entity's practices are in compliance with the rule.

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

35. It is important to note, in the first instance, that the imposition of a resale requirement confers substantial benefits on small entities, because a substantial number of those wireless resellers it is designed to protect are small. Moreover, the exemption from its requirements for certain C, D, E and F block licensees also benefits smaller entities because it exempts from the obligations of the resale rule, smaller, new entrant competitors that have little market share and little or no incentive to restrict resale unreasonably.

36. The Commission has also reduced the potential impact of the resale rule on small entities by continuing to exclude from its requirements those entities that have, traditionally, constituted the smallest of the SMR licensees, i.e., those licensees that do not provide services on an interconnected basis. In the Order on Reconsideration, the Commission has adopted an alternative definition of covered SMR that includes only those systems that have an in-network switching facility. This exception to coverage addresses the concerns of SMR providers that primarily offer traditional dispatch services but whose offer of limited interconnection capability might otherwise subject them to the resale rule as previously drafted. Such a result would have been inconsistent with the Commission's determination that only SMR providers that compete directly with cellular and broadband PCS should be subject to the resale rule, because an important indicator of a provider's ability to compete with traditional cellular and broadband PCS providers is whether the provider's system has ''in-network'' switching capability.

37. In-adopting a network switching criterion, the Commission has rejected a definition of SMR covered services that would exempt SMR providers based on their particular number of mobile units or on capacity. Defining the term covered SMR in terms of its number of subscribers or its capacity could exempt from the resale requirement services that compete in markets where competitive conditions do not yet sufficiently protect against unreasonable restrictions on resale. As we observed in the FRFA, our decision to extend the resale rule will not require any carrier to expand its capacity or to change its system in order to accommodate the desires of resellers.

VI. Report to Congress

38. The Commission will send a copy of this Order on Reconsideration, including a copy of this Supplemental Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Order on Reconsideration and this Supplemental FRFA will be sent to the Chief Counsel for Advocacy of the Small Business Administration. Finally, the Order on Reconsideration and Supplemental FRFA (or summaries thereof) will be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

39. Accordingly, the rule amendments and clarifications are adopted and shall be effective January 10, 2000.

40. Further, the Petitions for Reconsideration filed by AT&T Corp., the Personal Communications Industry Association, the American Mobile Telecommunications Association, and Nextel Communications, Inc. in CC Docket 94–54 are granted to the extent indicated herein and otherwise are denied.

41. The Petition for Reconsideration or Clarification filed by Small Business in Telecommunications, Inc. in CC Docket No. 94–54 is accepted to the extent such Petition seeks clarification, and otherwise is rejected as a late-filed Petition for Reconsideration.

42. The Petitions for Reconsideration or Clarification filed by the Cellular Resellers Association, Connecticut Telephone and Communications Systems, Inc. the National Wireless Resellers Association, and Small Business in Telecommunications, Inc. are denied.

43. Additionally, the Petition for Reconsideration filed by the Personal Communications Industry Association pertaining to WT Docket No. 98–100 and GN Docket No. 94–33 is granted to the extent indicated and otherwise is denied.

44. Finally, the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order on Reconsideration, 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 20

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 20 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICE

1. The authority citation for Part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332, unless otherwise noted.

2. Section 20.12 is revised to read as follows:

§ 20.12 Resale and roaming.

(a) *Scope of section.* This section is applicable as follows:

(1) *Scope of resale requirement.* Paragraph (b) of this section, concerning resale, is applicable to the following, if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls:

(i) Providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), except those C, D, E, and F block PCS licensees that do not own and control and are not owned and controlled by firms also holding cellular, A or B block licenses;

(ii) Providers of Cellular Radio Telephone Service (part 22, subpart H of this chapter); and

(iii) Providers of Specialized Mobile Radio Services (part 90, subparts of this chapter).

(2) *Scope of Roaming Requirement.* Paragraph (c) of this section, concerning roaming, is applicable only to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), providers of Cellular Radio Telephone Service (part 22, subpart H of this chapter), providers of Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands that hold geographic licenses and offer real-time, two-way voice service that is interconnected with the public switched network (included in part 90, subpart S of this chapter) and Incumbent Wide Area SMR Licensees.

(b) *Resale.* The resale requirement is applicable as follows:

(1) Each carrier identified in paragraph (a)(1) of this section shall not restrict the resale of its services, including enhanced services, unless the carrier demonstrates that the restriction is reasonable.

(2) The resale requirement shall not apply to customer premises equipment, whether or not it is bundled with services subject to the resale requirement in this paragraph.

(3) This paragraph shall cease to be effective five years after the last group of initial licenses for broadband PCS spectrum in the 1850–1910 and the 1930–1990 MHz bands is awarded; *i.e.*, at the close of November 24, 2002.

(c) *Roaming.* Each licensee identified in paragraph (a)(2) of this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if equipment that is technically compatible with the licensee's base stations.

[FR Doc. 99–29220 Filed 11–8–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 209, 225, 242, and 247

[DFARS Cases 98–D003, 99–D004, and 99–D010]

Defense Federal Acquisition Regulation Supplement; Contract Administration and Audit Services

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update policy pertaining to DoD contract administration and audit services. The rule updates references to DoD publications, and reorganizes DFARS test for consistency with the organization of Federal Acquisition Regulation (FAR) text pertaining to contract administration.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, Defense Acquisition Regulations Council, PDUSD (AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; telefax (703) 602–0350. Please cite DFARS Case 98–D003.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the DFARS to update policy pertaining to DoD contract administration and audit services. The rule updates references in the DFARS text and reorganizes portions of DFARS Part 242 for consistency with the organization of FAR Part 42. The rule also adds text at DFARS 242.302(a)(13) to clarify that the Defense Contract Management Command is not responsible for making contract payments.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D003.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204, 209, 225, 242, and 247

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 204, 209, 225, 242, and 247 are amended as follows:

1. The authority citation for 48 CFR parts 204, 209, 225, 242, and 247 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.202 is amended by revising paragraph (1)(iv) to read as follows:

204.202 Agency distribution requirements.

(1) * * *

(iv) One copy to the contract administration office (CAO) automatic data processing point, except when the DoDAAD code is the same as that of either the CAO or the payment office (see the Federal Directory of Contract Administration Services Components); and

* * * * *

204.7102 [Amended]

3. Section 204.7102 is amended in paragraph (b)(1) by removing the abbreviation ''DoD'' and adding in its place the word ''Federal''; and in paragraph (b)(3) by removing the words ''Office of Defense Commercial Communications'' and adding in their place the words ''Defense Information Technology Contracting Organization''.

PART 209—CONTRACTOR QUALIFICATIONS

209.106–2 [Amended]

4. Section 209.106–2 is amended in paragraph (1) in the first sentence by removing the reference and abbreviation ''DoD 4105.4, DoD'' and adding in their place the words ''the Federal''.

PART 225—FOREIGN ACQUISITION

5. Section 225.872–6 is amended by revising paragraphs (b) and (c)(1) to read as follows:

225.872–6 Audit.

* * * * *

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Deputy Director of Defense Procurement (Foreign Contracting), ((703) 697–9351/2/3, DSN 227–9351/2/3).

(c) * * *