Street, NE., Room 2A, Washington, DC 20426.

28. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

29. User assistance is available for eLibrary and the FERC's website during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov).*

**List of Subjects in 18 CFR Part 35**

Electric power, Reporting and recordkeeping requirements.

By direction of the Commission.

**Magalie R. Salas,**

*Secretary.*

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below:

## PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for part 35 continues to read as follows:

**Authority:** 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 35.27, paragraph (c) is added to read as follows:

**§ 35.27 Power sales at market-based rates.**

* * * * *

(c) *Reporting requirement.* Any public utility with the authority to engage in sales for resale of electric energy in interstate commerce at market-based rates shall be subject to the following:

(1) As a condition of obtaining and retaining market-based rate authority, a public utility with market-based rate authority must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to each of the following:

(i) Ownership or control of generation or transmission facilities or inputs to electric power production, or

(ii) Affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production or affiliation with any entity that has a franchised service area.

(2) Any change in status subject to paragraph (c)(1) of this section must be filed no later than 30 days after the change in status occurs.

[FR Doc. 04–23136 Filed 10–14–04; 8:45 am]

**BILLING CODE 6717–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CC Docket No. 98–170; CG Docket No; 04–244; FCC 04–162]**

### Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996; Truth-in-Billing and Billing Format

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules.

**SUMMARY:** In this document, the Commission seeks comment on how best to protect consumers and foster legitimate businesses that offer audiotext information services, including those that use 900 numbers and toll-free numbers.

**DATES:** Comments are due on or before November 15, 2004 and reply comments are due on or before November 29, 2004. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before December 14, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L. LaLonde@omb.eop.gov*, or via fax at 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** Ruth Yodaiken, of the Consumer & Government Affairs Bureau at (202) 418–2512 (voice), or e-mail *ruth.yodaiken@fcc.gov*. For additional information concerning the PRA information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), adopted July 1, 2004, and released July 16, 2004. This Notice of Proposed Rulemaking (*NPRM), Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-free Number Usage; Truth-in-Billing and Billing Format*, CC Docket No. 98–170, CG Docket No. 04–244; FCC 04–162, contains proposed information collection requirements. It will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA). OMB, the general public, and other federal agencies are invited to comment on the proposed information collection(s) contained in these proceedings. On July 16, 2004, the Commission also released a Memorandum Opinion and Order (*MO&O*), *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996*; *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Florida Public Service Commission Petition to Initiate Rulemaking to Adopt Additional Safeguards; Application for Review of Advisory Ruling Regarding Directly Dialed Calls to International Information Services*, CC Docket Nos. 96–146 and 98–170, RM–8783, ENF–95–20; FCC 04–162. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov*, or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This *NPRM* can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy/paypercall.html*.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed.

If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Parties who choose to file comments on billing issues, please reference both CG Docket No. 04–244 and CC Docket No. 98–170. Parties who choose to file comments on any other aspect of Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-free Number Usage, should reference only CG Docket No. 04–244. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554. Parties who choose to file paper comments also should send four paper copies of their filings to Kelli Farmer, Federal Communications Commission, Room 4–C734, 445 12th Street, SW., Washington, DC 20554.

One copy of each filing must be sent to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), by mail at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; by e-mail at *FCC@bcpiweb.com*; by facsimile at (202) 488–5563; or by telephone at (202) 488–5300.

**Initial Paperwork Reduction Act of 1995 Analysis**

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections requirements contained in this document, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due December 14, 2004. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–0748.

*Title:* Section 64.1504, Disclosure Requirements For Information Services Provided Through Toll-Free Numbers.

*Form Number:* N/A.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 6,500.

*Estimated Time per Response:* 2–5 hours.

*Frequency of Responses:* Occasionally; third party disclosure.

*Total Annual Burden:* 13,000–32,500 hours approximately.

*Total Annual Cost:* None.

*Privacy Act Impact Assessement:* No impact(s).

*Needs and Uses:* The item proposes to reexamine FCC rules in this area to ensure that consumer protections are adequate and are not being circumvented. The item seeks comment on a number of issues relating consumer protections and the state of the existing 900-number regime, toll-free numbers, and audiotext information services accessed through dialing methods other than 900 numbers. The Commission seeks comment on whether to revise certain recordkeeping requirements to allow recordings of customer's oral verification as evidence that charges should not be forgiven. We ask if we need to modify our existing rules to comport with the E-Sign Act which should ease any existing burdens. The item proposes to clarify that all audiotext information services, must either have presubscription agreements or use charge cards for billing. We note that parties are already required to garner authorization for such calls. These measures are aimed at preventing circumvention of our rules. We believe that any additional recordkeeping burden as a result of these rules would be minimal for most businesses. We estimate that this requirement will account for an additional 7 hours of recordkeeping burden per company, or an additional 10,500 hours.

*OMB Control Number:* 3060–0752

*Title:* Section 64.1510, Billing Disclosure Requirements for Pay-Per-Call and Other Information Services.

*Form No.:* N/A

*Type of Review:* Revision of currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 1,946.

*Estimated Time per Response:* 10 hours.

*Frequency of Response:* Annual reporting requirement; Third party disclosure.

*Total Annual Burden:* 19,460 hours.

*Total Annual Costs:* None.

*Privacy Act Impact Assessments:* No impact(s).

*Needs and Uses:* The item proposes to reexamine FCC rules in this area to ensure that consumer disclosures are adequate. The item also seeks comment on a proposal to change the display of toll-free numbers on telephone bills to clearly indicate the parties charging for information services obtained through toll-free numbers.

**Synopsis**

*1. Toll-free Numbers*

The Commission's rules, which implement the statute virtually verbatim, have detailed criteria that must be met in the limited circumstances under which calls

involving toll-free numbers can be used for purchases of goods and services, including audiotext information services. Our rules and the statute already require common carriers, including small carriers, to use contracts or tariffs to prohibit their customers from using 800 numbers in ways that are thought to leave consumers without the benefit of protections against fraud. For example, carriers must prohibit the use of 800 numbers, or any other numbers advertised or widely understood to be toll-free, in a way that the calling party is charged for information, with limited exception. There are exceptions for charges where there are presubscription agreements or use of certain credit and charge cards. The only way to have information charges that appear on a consumer's phone bill is through a presubscription agreement which in most cases must be in writing, include specific disclosures, and use personal identification numbers for access to the service. However, despite these protections, the Commission continues to receive complaints in this area. In the first six months of 2004, the Commission received close to 5,000 complaints that referenced toll-free numbers. We are interested in finding out why, with these protections, there are still complaints in this area. For example, are there many problems for consumers when charge cards are used for payment? (*See* 47 U.S.C. 228(c)(9); 47 CFR 64.1504(c)(2).) Do more problems occur, for example, when the written agreement does not require the use of a personal identification number? *See* 47 U.S.C. 228(c)(8)(C) and (D); 47 CFR 64.1504(f)(1) We seek comment on possible solutions.

a. Protection for Line Subscribers as Well as Callers

Section 228 and our rules governing toll-free calls explicitly protect ''the calling party'' from being charged for information conveyed during the call unless meeting the criteria discussed above. (*See* 47 U.S.C. 228(c)(7)(C) and (c)(8)–(9); *See also* 47 CFR 64.1504.) In the *1996 Order & NPRM*, the Commission discussed the possibility of extending the toll-free number protections that apply to the ''calling party,'' so that they also apply to the ''subscriber to the originating line.'' (1996 Order & NPRM, 11 FCC Rcd at 14753, para. 44. The calling party could be someone other than the subscriber, for example, a visitor to the subscriber's home.) We believe this proposal is still valid today. For directly-dialed toll calls placed without a calling card, it is the subscriber—not necessarily the calling party—who is assessed charges for calls placed over that line. It would not seem appropriate for an individual calling a toll-free number to be protected from incurring charges without extending the same protection to the individual or entity billed for the calls. We seek comment on whether we should amend § 64.1504 of our rules explicitly to protect the subscriber as well from the practices that Congress has chosen to prohibit. Would such an amendment help to protect small businesses from calls made by employees?

b. Use of Number Identification for Billing Through Toll-Free Numbers

Section 228(c)(7)(A) of the 1996 Act prohibits ''the calling party being assessed, by virtue of completing the call [to a toll-free number], a charge for the call.'' (47 U.S.C. 228(c)(7).) In the *1996 Order & NPRM*, the Commission adopted a rule that mirrors that portion of the § 228 and also prohibits such conduct. (47 CFR 64.1504(c).) In order to assess charges for directly dialed toll calls, common carriers identify the telephone line used to originate a toll call and assess charges to the subscriber to that line. The Commission generally has held telephone subscribers responsible for toll charges resulting from unauthorized use of their telephone lines. However, in the past, the Commission has received complaints that parties were using such information to bill callers for services from calls made to toll-free numbers. In the *1996 Order & NPRM*, the Commission also tentatively concluded that a carrier's billing of calls dialed to 800 or other toll-free numbers on the basis of one such technology, Automatic Number Identification (ANI), amounted to assessing charges on the basis of completion of the call, and therefore violated section 228(c)(7)(A) of the Act, unless the call involved use of telecommunications devices for the deaf. (The term ''ANI'' refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery to end users. *See* 47 CFR 64.1600(b). *See also 1996 Order & NPRM*, 11 FCC Rcd at 14754, para. 45. Telecommunications devices for the deaf utilize ANI to identify the telephone subscriber to be billed. The Commission also made a tentative conclusion that ANI-based billing also violates 201(b) in the *1996 Order & NPRM. See 1996 Order & NPRM*, 11 FCC Rcd at 14754, para. 45; *See also* 47 U.S.C. 228(c)(7), 47 CFR 64.1504(c), and 47 U.S.C. 201(b). Section 201(b) requires that all charges and practices for and in connection with any common carrier communications services be just and reasonable) At that time, commenters generally agreed that a carrier's billing of toll-free calls on the basis of ANI violated the statute. In the interests of collecting a more complete record to include newer technology, we now seek comment on whether we should specifically prohibit billing calls dialed to 800 or other toll-free numbers on the basis of not just ANI, but equivalent information, automatically provided calling number identification. (*See, e.g.*, 47 CFR 64.1600(d) (charge number—conveying similar information in a System 7 environment).)

*2. Audiotext Information Services, Including Pay-Per-Call Services*

a. Consumer Protection in General

The Commission's rules governing pay-per-call services are meant to be a framework of consumer protections for these audiotext information services. The rules require, first, that consumers are given appropriate information, such as pricing, so they can make informed decisions about services. (The Commission rules require carriers themselves to disclose information, and/or to require disclosure through contract or tariff. *See* 47 CFR 64.1502, 1504, and 1509. The rules require compliance with Titles II and III of TDDRA, and the FTC's implementing rules. *See* 16 CFR 308.5 (FTC's rules relating to pay-per-call).) Second, consumers are meant to be able to choose to block unwanted access to the pay-per-call services, for free or at a reasonable cost. (47 U.S.C. 228(c)(5). *See also* 47 CFR 64.1508.) And third, consumers are supposed to be protected from losing local or long-distance services for nonpayment of charges for pay-per-call services. (47 U.S.C. 228(c)(4). *See also* 47 CFR 64.1507.) However, we are concerned that as audiotext information services have migrated increasingly outside the pay-per-call setting, consumers, including small business consumers, have lost some of these basic protections. Consumer disclosure requirements for audiotext information services only apply to services over 900 numbers, and, as above, some calls over toll-free numbers. Similarly, alternative dialing routes circumvent subscriber blocking, allowing even children to obtain access to audiotext information services. Additionally, consumers' calls are sometimes rerouted without their authorization through specialized long-distance carriers designed to accumulate high rates for what are advertised as free information services. Under those conditions, consumers can end up being

disconnected for what are essentially services that arguably should be covered by pay-per-call protections. In this rulemaking we explore several of these areas, and seek comment on the best way to address concerns of consumers, without hindering legitimate businesses, including small and new businesses. One such example of an item outside the standard pay-per-call application is a phenomena known informally as ''modem hijacking.'' The Commission has received complaints about local calls which are redirected without the caller's authorization through software programs, which disconnects Internet users' calls and dial international numbers often through carriers other than those chosen by subscribers for their long-distance calls. Sometimes there is no way to disconnect the call other than to unplug the telephone line. Furthermore, the placement of a call to an international telephone number in situations like this does not necessarily mean it connects through the country to which it is assigned.

Although the FTC has addressed some cases in this area, we seek comment on whether additional actions are needed from the FCC. (*See, e.g.*, *FTC* v. *BTV Industries, Rik Covell, Adam Lewis, National Communications Team, Inc., LO/AD Communications Corp., and Nicholas Loade*r, CV–S–02–0437–LHR–PAL, Complaint, and Temporary Restraining Order (D Nev. 2002) (alleging defendant sent e-mail messages claiming that consumers had won a prize, and when consumers responded, routing the calls to an adult Internet site via a 900-number modem connection generating high per-minute rates). In that case, the FTC alleged that the defendant's practices were deceptive and misleading by, among other things, leading consumers to believe that the connection to the web site was toll-free. *See, also, FTC* v. *Verity Int'l, Ltd.*, 194 F.Supp.2d 270, 276 (S.D.N.Y. 2002) (FCC supported the FTC action in a friend of the court brief).) We invite commenters to offer specific proposals consistent with our section 228 authority. We have on a case-by-case basis looked at some parameters of using 201(b) to review certain relationships between carriers and information providers in chat-line cases. (*See, e.g.*, *Beehive* v. *AT&T*, 17 FCC Rcd 11641 (2002); *AT&T Corp.* v. *Jefferson Telephone Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16130 (2001) (*Jefferson*).) We seek comment on the broader policy of what factors and concerns we should take into account in making decisions regarding the broad practices and conduct in this general area, including whether we should consider revoking carriers' section 214 certification for such conduct. (*See* 47 U.S.C. 214.) We seek comment on whether consumers should be given protections to allow call disconnection.

b. The 900 Number Regime

Section 228 also requires the Commission to identify procedures that common carriers and pay-per-call providers, including small carriers and providers, can use to protect against nonpayment of legitimate charges. (47 U.S.C. 228(b)(4).) Pay-per-call providers have recently commented that audiotext information service providers have moved outside the 900 number regime because it has become a difficult environment in which to operate. In addition, AT&T Corp. noted that pay-per-call providers may avoid federal regulation by using revenue sharing agreements and instant credit to mask services that otherwise would be regulated as pay-per-call.

The use of 900 numbers has dropped dramatically in the past five years. For example, the number of assigned 900 numbers, which peaked in 1999 with 447 distinct 900 NXX codes, had dropped to 206 by the end of 2002. Many of those numbers are not actually used by end users. Many carriers decline to provide transport or bill for 900 numbers. Further, some pay-per-call providers claimed that carriers forgive disputed pay-per-call charges repeatedly for the same subscribers without instituting 900 number blocking in those cases. One participant expressed concern that the health of the 900 number rules, if applicable, is crucial to market and consumer confidence. Clearly the Commission does not want to direct pay-per-call providers to a system that does not function. We seek comment on what steps can be taken to ensure the 900 number regime functions properly.

One commenter noted that a practice used in the United Kingdom requiring pay-per-call providers to record the customer's voice greatly reduced disputes over charges. We seek comment on whether it would be appropriate to allow carriers to accept recordings of customer's oral verification that they understand and agree to the charges as evidence that charges should not be forgiven. We seek comment from pay-per-call providers on whether such items would be necessary.

c. Presubscription or Comparable Arrangement

As noted previously, the Commission requires services meeting the pay-per-call definition to be accessed only through 900 numbers, and the only ways that audiotext information services fall outside the pay-per-call definition, and therefore the requirement that they be offered only over 900 numbers, are (1) by being directory services as described in the statute, or (2) to have charges assessed only after there is a ''presubscription or comparable agreement.'' (47 U.S.C. 228(i) and (b)(5).) In the *1996 Order & NPRM*, the Commission sought comment on refining the definition of presubscription and comparable agreement so that it is clear what criteria must be met for all audiotext information services other than directory services to be offered over numbers outside of the 900 prefixes, including those services using toll-free numbers. Rather than having the Commission designate all prefixes as pay-per-call prefixes to ensure protection for consumers, the Commission proposed to make clear that to operate outside of 900 numbers, all audiotext information services (other than directory services) must either have presubscription agreements executed in writing or, alternatively, require that payments be made through direct remittance, prepaid account, or debit, credit, charge or calling card. For example, this proposal would apply such protections to 500 numbers, 700 numbers, plain old telephone service and international numbers when used to provide audiotext information services.

We again seek comment on the usefulness and practicality of such a proposal. In particular, we ask whether this proposal would be adequate to balance the need to protect consumers, but allow businesses to develop. In particular, how would this proposal effect small businesses? Are small businesses already keeping such records? In addition, we seek comment on whether there is still a need for such changes in this area given developments in electronic commerce and related laws, and the now-common use of third-party verifications in telephone transactions.

We also seek comment on whether we need to modify our existing and proposed rules given our obligations under the Electronic Signatures in Global and National Commerce Act (E-Sign Act). (Electronic Signatures in Global and National Commerce Act, S. 761, 106th Cong., 2d Sess. (signed into law June 30, 2000).) Under the E-Sign Act, a contract or business transaction cannot be denied validity or enforceability solely because the contract or transaction is not in writing, so long as the contract or transaction is a properly authenticated electronic

record or has been affirmed by an electronic signature. The E-Sign Act provides a specific framework for the use of electronic records and signatures and places limits on the interpretation authority of federal and state regulatory agencies with regard to this framework. We seek comment on how we might best adjust our current and proposed requirements for presubscription or comparable agreements to best comply with the E-Sign Act.

*3. Billing*

Section 228 and our rules already mandate certain billing practices for pay-per-call services and 800 numbers billed via the telephone bill. (*See* 47 U.S.C. 228(c)(8)(B) and (d)(4); *See also* 47 CFR 64.1504, 1509 and 1510.) Telephone billing of subscribers for any pay-per-call services must already display any such charges ''in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges,'' and, at a minimum, describe the type of service, the amount of the charge, and the date, time, and duration of the call. There must also be a clearly-identified toll-free number established for customers to call with any questions. 47 U.S.C. 228(d)(4); *See also* 47 CFR 64.1509(b) and 47 CFR 64.1510(2). For toll-free numbers used to bill items on a telephone bill, the number called must be listed clearly with a disclaimer in prominent type that neither local nor long distance service could be disconnected for ''failure to pay disputed charges for information services.'' In addition, the Commission has developed rules and guidelines in the *Truth-in-Billing* proceeding to ensure that all telephone billing is readily discernable to consumers. (*See* 47 CFR 64.2400–2401; *see also Truth-in-Billing and Billing Format*, CC Docket No. 98–170, First Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 7492 (1999) (*Truth-in-Billing Order*)). In general, charges must be accompanied by ''a brief, clear, non-misleading, plain language description of the service or services rendered'' that allows consumers to ''accurately assess that the services for which they are billed correspond to those that they requested and received,'' and that the costs ''conform to their understanding of the prices charged.'' (47 CFR 64.2401(b). *See also Truth-in-Billing Order*.) The *Truth-in-Billing Order* requires that telephone bills highlight changes in or additions of new providers, but non-recurring pay-per-call services are specifically exempt from that requirement. (*Truth-in-Billing and Billing Format*, Order on Reconsideration, 15 FCC Rcd 6023, at 6025, para. 5 (2000) (*Truth-in-Billing Reconsideration*.))

We seek comment on whether our existing rules governing billing specifically for pay-per-call services and those for charges billed through toll-free numbers, in combination with our *Truth-in-Billing* rules and guidelines, are sufficient to address any current billing concerns. (We note that the Commission's billing rules specifically do not preempt states from adopting or enforcing their own consistent rules. 47 CFR 64.2400(b). For example, Florida has adopted a rule specifically aimed at pay-per-call problems. *See Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, Florida Public Service Commission Notice of Withdrawal of Petition to Initiate Rulemaking, filed January 26, 2004.) We seek comment specifically on whether we should adopt a rule stating that charges for presubscribed audiotext information services accessed through toll-free numbers must be displayed separately from local and long-distance telephone service. How would such a rule affect small carriers?

*4. Revenue-Sharing Arrangements*

The definition of pay-per-call services found in § 228 rests on the requirement that such calls are only those calls to audiotext information services for which the caller pays a per-call or per-time-interval charge greater than or in addition to the ''charge for transmission of the call.'' Some businesses have used revenue-sharing arrangements to offer for-profit audiotext information services without pay-per-call regulation. The classic scenario is when an audiotext information service provider does not charge callers for the service outright, but instead receives a commission from a common carrier for the telephone traffic, which might be charged at a high rate.

In the *1996 Order & NPRM*, the Commission sought to address these types of evasions of consumer protections. The Commission tentatively concluded that certain revenue-sharing arrangements were in reality charging for more than just transmission of the call, even if the caller was not billed separately for the audiotext information service. (*1996 Order & NPRM* at 14756 para. 48. The Commission based its tentative conclusion on its authority under § 154(i), and addressed circumvention of section 228 through the language related to the cost of transmission.) Specifically, the Commission tentatively concluded that any form of remuneration between a carrier and audiotext information services provider constituted *per se* evidence that the charge levied actually exceeds the charge for the transmission.

Accordingly, under this tentative conclusion, interstate services provided through such an arrangement would fit within the pay-per-call definition and, thus, be required to be offered exclusively through 900 numbers. The *1996 Order & NPRM* also notes a staff letter which discussed several hypothetical scenarios in which revenue-sharing arrangements were used essentially to mask audiotext information services from pay-per-call regulation. In the Marlowe Letter, the staff's opinion was that such scenarios would violate both sectiion 228 and section 201(b). (Letter from John Muleta, Chief of the Common Carrier Enforcement Bureau at that time, to Ronald Marlowe, 10 FCC Rcd 10945, DA 95–1905 (September 1, 1995) (*Marlowe Letter*). *See* 47 U.S.C. 201(b). Section 201(b) requires all charges and practices for and in connection with any common carrier communications services be just and reasonable.)

In 2001, the Commission determined that the existence of a revenue-sharing arrangement between a common carrier and a chat-line service alone did not demonstrate that a carrier's conduct was unjust and unreasonable under section 201(b). (*Jefferson.*, 16 FCC Rcd at 16136, para. 13. (2001) (overruling Marlowe to the extent that it was not consistent with the conclusions in the Order). *See also Beehive*; *Jefferson; AT&T Corp.* v. *Frontier Communications of Mt. Pulaski, Inc.,* 17 FCC Rcd 4041 (2002) (follows *Jefferson*), *AT&T* v. *Atlas Telephone Co. and Total Telecommunications Services, Inc.,* 16 FCC Rcd 5726 (2001), *aff'd in part and remanded sub nom*, *AT&T Corp.* v. *F.C.C.*, 317 F.3d 227 (DC Cir. 2003); *dismissed*, *Atlas Telephone Co.* v. *AT&T Corp.*, File No. E–97–03, Order, 18 FCC Rcd 11533.) Although the Commission noted in *Jefferson* that it was not addressing the application of section 228 to such a situation, the decision calls into question our basis for our prior tentative conclusion in the *1996 Order & NPRM.* (*Jefferson*, 16 FCC Rcd at 16133 n.18.) Thus, we no longer reach that tentative conclusion here. Instead, we invite commenters, including small carriers and small audiotext information service providers, to address the issue of revenue-sharing arrangements in light of the *Jefferson* decision. Parties should discuss whether it is possible or appropriate to find that any revenue-sharing arrangements do not comply with section 228 even if such arrangements would not violate 201(b).

*5. New and Evolving Services*

a. Definition of Exempted Directory Services

Section 228 exempts ''directory services'' from the definition of pay-per-call. In the *TDDRA R&O* implementing section 228, commenters asked the Commission to interpret the definition of ''directory services'' to include only ''basic'' directory services. The Commission noted that a common carrier also operating as a provider of audiotext information services ''cannot shield its information services from pay-per-call regulation by offering them through a directory services number.'' In 2003, some commenters stated that ambiguities in this area persist. They asked that the Commission ''clarify'' that enhanced directory services were exempt from pay-per-call.

Examples of such services mentioned in the comments to CC Docket No. 96–146 include such things as a service that allows subscribers to access directory listings by category, and then obtain additional information about the listing, upload personal contacts into a private database, and use a live operator to access their own personal data. Another service allows wireless subscribers to store personal address books on a network server and have voice-activated access to data with news, receive wake-up calls and get travel information ''at no additional charge.'' Another proposed service would add more content such as information about the weather, and have partnerships with businesses to allow for such connections as transferring customers to places for ticket purchases.

In other proceedings, the Commission has already been presented with questions about the offering of directory services that are more than ''traditional'' operator provision of local telephone numbering. In the N11 numbering proceeding, some commenters had argued that Local Exchange Carrier (LEC) use of the 411 number should be restricted to the provision of ''traditional'' directory services, meaning operator provision of local telephone numbers. (*The Use of N11 Code and Other Abbreviated Dialing Arrangements*, CC Docket No. 92–105, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5572, 5600, para. 48 (*N11 First Report and Order*).) The Commission declined to do so at that time, and instead concluded that a LEC could offer enhanced services using a 411 code, or any other N11 code, only if that LEC offered access to the code on a reasonable, nondiscriminatory basis to competing enhanced services providers. In January 2002, the Commission released a Notice of Proposed Rulemaking in a related proceeding specifically asking whether allowing enhanced directory assistance to be available through presubscribed 411 would be consistent with Commission rules regarding pay-per-call and related services. (*Provision of Directory Listing Information Under the Communications Act of 1934, as Amended*, CC Docket No. 99–273; *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92–105; *Administration of the North American Numbering Plan*, CC Docket No. 92–237, Notice of Proposed Rulemaking, 17 FCC Rcd 1164, 1183, para. 37 (FCC 01–384) (*N11 NPRM*).) We seek comment on the narrow question of how to further define ''directory services'' that are specifically exempt from the consumer protections of pay-per-call, regardless of whether any presubscription or comparable agreement exists.

b. Data Services

At least two commenters in 2003, claimed that data services are exempt from regulation under section 228 and another has suggested that uncertainty in this area might fluster development of nascent industries. However, section 228 has several provisions that allude to data services being pay-per-call services. First, section 228(f)(3) required the Commission to review the ''extension of regulation under [section 228] with respect to persons that provide, for a per-call charge, data services that are not pay-per-call services.'' In the *First TDDRA Order,* the Commission noted that the statutory definition of pay-per-call includes ''data information services,'' but it did not find a need to warrant extension of regulation of section 228 outside pay-per-call data services. In addition, section 228(c)(8) provides an exception to the criteria for written agreements for ''any purchase of goods or of services that are not information services.'' We seek comment on whether further clarification is needed on this topic of what data services fit within the pay-per-call definition. We seek specific comments on items that might be of significant concern for consumers and for developing businesses, including small businesses.

**Initial Regulatory Flexibility Analysis (IRFA)**

Initial Regulatory Flexibility Analysis (*IRFA*), as required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (*IRFA*) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking and Memorandum Opinion and Order (*NPRM*). (*See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law Number. 104–121, Title II, 110 Statute 857 (1996).) Written public comments are requested on this *IRFA.* Comments must be identified as responses to the *IRFA* and must be filed by the deadline for comments on the *NPRM* provided above in the Comment Filing Procedures section paragraph 45. The Commission will send a copy of the *NPRM*, including this *IRFA*, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and *IRFA* (or summaries thereof) will be published in the **Federal Register**.

**Need for, and Objectives of, the Proposed Rules**

The Commission has rules to afford consumers protection from deceptive practices associated with the provision of audiotext information services, and the use of toll-free numbers. In 1996, the Commission issued a Notice of Proposed Rulemaking (*NPRM*) proposing rules which were intended to address potential circumvention of the regulations. Later, in March of 2003, the Commission issued a Public Notice seeking to refresh the record in the proceeding. In this *NPRM*, the Commission initiates a new proceeding to review the effectiveness of our rules governing pay-per-call services, related audiotext information services, and toll-free numbers. The Commission seeks comment on the state of the 900-number regime regulating pay-per-call services, the effectiveness of consumer protections relating to toll-free numbers, and to those audiotext information services accessed through dialing methods other than 900 numbers. We are interested in learning the extent to which consumer protections have been circumvented, and what steps we might take to protect consumers, including small business consumers, from such practices. In addition, we seek comment on changes in technology that warrant re-examination and clarification of these rules.

**Legal Basis**

The legal basis for any action that may be taken pursuant to this *NPRM* is contained in sections 1–4, 201(b), 228, and 303(r) of the Communications Act

of 1934, as amended, 47 U.S.C. 151–154, 201(b), 228, and 303(r).

**Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

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

Small entities potentially affected by the policies and rules proposed herein include organizations, governmental jurisdictions, providers of audiotext information services, and providers of telecommunications and other services, including both wired and wireless services, such as operator service providers, prepaid calling card providers, and other toll carriers.

*Small Businesses.* Nationwide, there are approximately 22.4 million small businesses, according to SBA data.

*Small Organizations.* A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, there are approximately 1.6 million small organizations. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 government jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 have populations of fewer than 50,000 and 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be up to 85,955.

*Providers of audiotext information services.* While the Commission's rules directly apply to common carriers that transmit and bill subscribers for information services, other companies actually providing the information services might be indirectly affected. For example, audiotext information service providers that have used toll-free numbers to provide information services will be affected by the proposed limitations involving the use of toll-free numbers and mandatory written presubscription. These companies may experience an adverse economic impact in that they will have to change the manner in which they provide services to secure billing.

The Commission has only limited unverifiable information to predict either the total number of audiotext information service providers, or the percentage of providers that qualify as small entities. Audiotext Information Service providers are not subject to federal licensing or reporting requirements. In 1996, staff had been able to obtain from industry sources only an informal estimate that the total number of these entities operating, which at that time was noted as probably somewhere between 10,000 and 20,000 total operating entities. Although the Commission asked for comment as to the number of small businesses that would have been affected by regulations proposed in this area in 1996, the Commission received no data in comments. Even assuming that this rough estimate is correct, we cannot, with certainty identify what portion of such providers might be providing services in a manner that would subject them to the proposed regulations governing toll-free numbers and presubscription agreements, or predict what portion of all such providers are small businesses. We invite parties commenting on this IRFA to provide information as to the number of small businesses that would be affected by our proposed regulations and to identify alternatives that would reduce the burden on these entities while still ensuring that consumers are protected adequately.

*All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' We note that, in our Notice, we have described activities such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar Internet Protocol-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6 million or less in average annual receipts. According to United States Bureau of the Census (the Census Bureau) data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under $5 million, and an additional nine firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

*Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1997, there were 6,239 firms engaged in providing telephone services, as defined therein. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, mobile service carriers, operator service providers, pay telephone operators, personal communications service (PCS) providers, covered small mobile radio (SMR) providers, and resellers. It seems certain that some of those 6,239 telephone service firms may not qualify as small entities because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that 6,239 or fewer telephone service firms are small entity telephone service firms that may be affected by the policies and rules proposed in this *NPRM.*

*Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.

According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard,

the great majority of firms can be considered small.

*Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed policies and actions.

*Competitive LECs, Competitive Access Providers (CAPs), and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers have reported that they are ''Other Local Service Providers.'' Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Service Providers'' are small entities that may be affected by our proposed policies and actions.

*Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed policies and actions.

*Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by our proposed policies and actions.

*Operator Service Provider (OSP).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed policies and actions.

*Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed policies and actions.

*Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, OSPs, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by our proposed policies and actions.

*Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997, show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997, show that there were 977 firms in this category, total, that operated for the entire year.

Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

*Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994, and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the

Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

*Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of Cellular and Other Wireless Telecommunications. Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997, show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

In the *Paging Second Report and Order,* the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 608 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

**Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

There are several compliance requirements addressed in this item. One, carriers are responsible for assuring that toll-free numbers, when they appear on a telephone bill, must appear in a separate section of the bill in order to make it easier for consumers to understand charges that stem from calls to toll-free numbers. Carriers are already required to separate out a variety of calls, *e.g.* local versus long distance; therefore, we do not expect this compliance requirement to be particularly burdensome for carriers, even small carriers.

This is not a new requirement, just a clarification of an existing one. Two, in order to operate outside 900 numbers, all audiotext information services—not only those using toll-free numbers—must be provided pursuant to a written (or the electronic equivalent) presubscription agreement or made through payments involving direct remittance, prepaid account, or debit, credit, charge, or calling cards. These proposed policies and rules are designed to clarify the existing requirement that the presubscription or comparable agreement be in writing or make use of one of the payment methods discussed above. As such, any proposed policy or rule changes do not constitute an additional compliance burden.

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

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' Commenters, in 2003, noted that audiotext service providers found the 900 number regime has become a difficult environment in which to operate a business. Some businesses complained that charges for audiotext information services were dropped from carriers' bills. In order to address this concern we are considering allowing carriers to accept recordings of customer oral verifications as evidence that charges through 900 numbers should not be removed from the telephone bill. These verifications would indicate that the customer understood and agreed to the 900 number charges. We expect this alternative to assist small businesses, both carriers and audiotext information service providers, by facilitating billing on a telephone bill as opposed to a credit card or other such means. We note in the primary item that disputes over such charges were greatly reduced once oral verification was implemented in another country.

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

Federal Trade Commission (FTC) regulations pursuant to the Telephone Disclosure and Dispute Resolution Act (TDDRA), prescribe federal standards governing some audiotext information service providers and all entities, including common carriers, which bill and collect for interstate information services. The FTC has noted that the expansion of the definition of covered services under its governing statutes from Titles II and III of TDDRA, does not have any effect upon the main definition of pay-per-call services under Title I of TDDRA, codified as section 228. The FTC initiated a proceeding in this area in 1998, but at this time it has not issued final conclusions.

**Ordering Clauses**

Accordingly, pursuant to the authority contained in sections 1–4, 201(b), 228 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201(b), 228 and 303(r); and 47 CFR 64.1501–1515 of the Commission's rules, this *Notice of Proposed Rulemaking* is adopted.

The Commission's Consumer & Governmental Affairs Bureau, Reference

Information Center, shall send a copy of this *Notice of Proposed Rulemaking,* including the *Initial Regulatory Flexibility Analysis,* to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–23192 Filed 10–14–04; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[CS Docket No. 95–184; MM Docket No. 92–260; FCC 04–228]**

### Telecommunications Services Inside Wiring, Customer Premises Equipment and Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission addresses an amendment to a Note in its rules to include wiring behind sheet rock as an example, along with wiring located behind brick, metal conduit or cinder blocks, as wiring considered to be ''physically inaccessible'' as that term is used regarding the Commission's cable television inside wiring rules. The consequence of that conclusion is to move the point at which a competing multichannel video programming distributor (''MVPD'') can gain access to wiring located behind sheet rock closer to the incumbent cable operator's junction box, thereby facilitating competition between MVPD providers to serve an MDU. The Court of Appeals found that the Commission offered no reasoned basis for the amendment to add sheet rock and remanded the case back to the Commission for further consideration. This document seeks additional comment from interested parties regarding the Commission's conclusion that cable wiring located behind sheet rock is ''physically inaccessible'' as that term is used in our rules.

**DATES:** Comments are due November 15, 2004 and reply comments are due December 6, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See Supplementary Information for filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Kosar, Media Bureau at (202) 418–1053 or via internet at *karen.kosar@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Further Notice of Proposed Rule Making (FNPRM), CS Docket No. 95–184 and MM Docket No. 92–260, adopted September 22, 2004 and released September 29, 2004. The full text is available for inspection and copying during normal business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY–A267, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference center may contact Bill Cline at (202) 418–0267 (voice), (202) 418–7365 (TTY), or *bcline@fcc.gov*. Documents are also available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of documents also may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, e-mail *fcc@bcpiweb.com*, or via its Web site *http:// www.bcpiweb.com*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call consumer and Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

1. This Further Notice of Proposed Rule Making (FNPRM) is issued in response to a decision issued by the United States Court of Appeals for the District of Columbia Circuit regarding amendment of the Commission's cable television inside wiring rules. In the First Order on Reconsideration and Second Report and Order in the proceeding, the Commission, in part, modified its rules to provide that home run wiring located behind sheet rock is considered to be physically inaccessible for purposes of determining the demarcation point between home wiring and home run wiring. At issue in the Appeals Court decision is the Commission's amendment of the Note to § 76.5(mm)(4) of the Commission's rules to indicate that wiring embedded in sheet rock would be considered physically inaccessible. Prior to its Reconsideration Order and amendment of the Note to § 76.5(mm)(4), the Commission determined under its definition of ''physically inaccessible,'' for example, that wiring embedded in brick, metal conduit or cinder blocks would likely be physically inaccessible; wiring simply enclosed within hallway molding would not. By expanding the Note to § 76.5(mm)(4) to include sheet rock in its Reconsideration Order, the Court of Appeals found that the Commission offered no reasoned basis for the amendment and remanded the case to the Commission for further consideration.

2. In response to the Court's decision, the FNPRM seeks additional comment on whether accessing inside wiring behind sheet rock (1) will involve significant modification of or damage to preexisting structural elements and (2) will add significantly to the difficulty and cost of wiring an MDU. The FNPRM seeks comment as to whether our conclusions in general as stated in the Reconsideration Order with regard to § 76.5(mm)(4) of the rules and the applicable Note are correct. In addition, the FNPRM seeks comment as to whether there is an additional or more appropriate standard that would support the amendment of our rule in light of the Court's remand. The FNPRM also seeks comment as to whether any specific language changes or eliminations should be made to our rule.

## I. Procedural Matters

### *A. Initial Regulatory Flexibility Analysis*

3. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this document. The IRFA is set forth in the below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

### *B. Paperwork Reduction Act*

4. This FNPRM does not contain proposed information collections subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).