

**PART 438—MANAGED CARE**

1. The authority citation for part 438 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**Subpart A—General Provisions****§ 438.6 [Amended]**

2. Section 438.6 is amended by removing paragraph (c)(5)(v).

**Subpart B—State Responsibilities**

3. Section 438.60 is revised to read as follows:

**§ 438.60 Limit on payment to other providers.**

The State agency must ensure that no payment is made to a provider other than the MCO, PIHP, or PAHP for services available under the contract between the State and the MCO, PIHP, or PAHP, except when these payments are provided for in title XIX of the Act or in 42 CFR.

**PART 447—PAYMENTS FOR SERVICES**

4. The authority citation for part 447 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**Subpart B—Payment Methods: General Provisions**

5. Section 447.201 is amended by adding a new paragraph (c) to read as set forth below.

**§ 447.201 State plan requirements.**

(c) The plan must not include payments for graduate medical education to any provider or institution or include costs of graduate medical education as an allowable cost under any cost-based payment system (including costs or payments claimed as administrative costs).

**Subpart C—Payment for Inpatient Hospital and Long-Term Care Facility Services**

6. Section 447.257 is amended by:  
A. Designating the existing paragraph as paragraph (a).  
B. Adding a new paragraph (b) to read as follows:

**§ 447.257 FFP: Conditions relating to institutional reimbursement.**

(b) FFP is not available in expenditures for graduate medical education in hospitals and long-term care facilities.

7. Section 447.272 is amended by republishing the heading to paragraph (b) and revising paragraph (b)(1) to read as follows:

**§ 447.272 Inpatient services: Application of upper payment limits.**

\* \* \* \* \*

(b) *General rules.* (1) “Upper payment limit” refers to a reasonable estimate of the amount that would be paid for the services furnished by the groups of facilities under Medicare payment principles in subchapter B of this chapter. For purposes of the Medicaid upper payment limit calculation, direct graduate medical education payments are not an allowable component of a Medicare payment and must be excluded from the calculation.

\* \* \* \* \*

**Subpart F—Payment Methods for Other Institutional and Non-Institutional Services**

8. Section 447.304 is amended by:

A. Revising paragraph (b) to read as follows:

**§ 447.304 Adherence to upper limits; FFP.**

\* \* \* \* \*

(b) FFP is not available in expenditures for graduate medical education.

\* \* \* \* \*

9. Section 447.321 is amended by republishing the heading to paragraph (b) and revising paragraph (b)(1) to read as follows:

**§ 447.321 Outpatient hospital and clinical services: Application of upper payment limits.**

\* \* \* \* \*

(b) *General rules.* (1) “Upper payment limit” refers to a reasonable estimate of the amount that would be paid for the services furnished by the groups of facilities under Medicare payment principles in subchapter B of this chapter. For purposes of the Medicaid upper payment limit calculation, direct graduate medical education payments are not an allowable component of a Medicare payment and must be excluded from the calculation.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 11, 2007.

**Leslie V. Norwalk,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: May 17, 2007.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. 07–2576 Filed 5–18–07; 4:38 pm]

BILLING CODE 4120–01–P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 54**

[WC Docket No. 05–337, CC Docket No. 96–45, FCC 07–88]

**High-Cost Universal Service Support; Federal-State Joint Board on Universal Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission seeks comment on the Federal-State Joint Board on Universal Service’s recommendation that the Commission adopt an interim cap on support for competitive Eligible Telecommunications Carriers.

**DATES:** Comments are due on or before June 6, 2007. Reply Comments are due on or before June 13, 2007.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission’s Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

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

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

**FOR FURTHER INFORMATION CONTACT:** Ted Burmeister, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Notice of*

*Proposed Rulemaking*, in WC Docket No. 05–337 and CC Docket No. 96–45, released May 14, 2007. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

## I. Introduction

In this Notice of Proposed Rulemaking (NPRM), we seek comment on the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) that the Commission takes immediate action to rein in the explosive growth in high-cost universal service support disbursements. Specifically, we seek comment on the Joint Board's recommendation that the Commission impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive. The Joint Board also recommended that both it and the Commission further explore comprehensive high-cost distribution reform, and sought comment on various reform proposals in a Public Notice released on the same day as the *Recommended Decision*, in WC Docket No. 05–337, CC Docket No. 96–45 released on May 1, 2007.

## II. Procedural Matters

### A. Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 9 of the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

a. Need for, and Objectives of, the Proposed Rules

2. Section 254(a)(2) of the Communications Act of 1934, as amended (the Act), requires that the Commission implement within one year recommendations from the Joint Board based on the universal service requirements provided in section 254 of the Act, which establishes a number of

principles for the preservation and advancement of universal service in a competitive telecommunications environment. On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support for competitive ETCs to rein in the explosive growth in universal service. In this NPRM, the Commission seeks comment on the Joint Board recommendation that the Commission cap competitive ETC support at the amount of support received by competitive ETCs in 2006. The objective of the NPRM is to explore whether the Commission should take action to cap the high-cost universal service support in the manner that the Joint Board recommends, and whether there are other issues related to the interim cap that should be considered.

### b. Legal Basis

3. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 4(j), 201, 202, 205, 214, 254, 403 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 202, 205, 254, 410 and sections 1.1, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 C.F.R. 1.1, 1.411, 1.412, 1.415, 1.419, 1.1200–1.1216.

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

4. 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 rules, if adopted. 5 U.S.C. 604(b)(3). The RFA generally defines the term “small entity,” 5 U.S.C. 601(6), as having the same meaning as the terms “small business,” 5 U.S.C. 601(3), “small organization,” 5 U.S.C. 601(4), and “small governmental jurisdiction,” 5 U.S.C. 601(5). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act, unless the Commission has developed one or more definitions that are U.S.C. 601(3). Under the Small Business Act, a “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and

is not dominant in its field.”

Nationwide, as of 2002, there were approximately 1.6 million small organizations.

5. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

### d. Wireline Carriers and Service Providers

6. 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.

7. *Incumbent LECs*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. 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 data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 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 action.

8. *Competitive LECs, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

e. *Wireless Carriers and Service Providers*

9. *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 categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

10. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 221 of these are small under the SBA small business size standard.

f. *Satellite Service Providers*

11. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.

12. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

13. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) Providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." For this category, Census Bureau data for 2002 show that there

were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

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

14. The specific proposals under consideration in the NPRM would not, if adopted, result in additional recordkeeping requirements for small businesses.

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

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities. See 5 U.S.C. 603(c).

16. This IRFA seeks comment on how the Joint Board's recommendation could be implemented in a manner that reduces the potential burden and cost of compliance for small entities. We also seek comment on the potential impact of the proposed recommendations related to the interim cap proposal on high-cost universal support for competitive ETCs. In the NPRM, the Commission has offered several alternatives and that might avoid or mitigate reductions in the amount of high-cost support flowing to competitive ETCs, some of which might be small entities. For instance, the Commission inquires into other methods, besides a cap, to control the growth of high-cost support; asks about the length of time the interim cap should be in place; seeks comment on the level that the cap should be set at; and asks whether other operational, administrative, or implementation issues might have an impact on implementing an interim cap.

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

17. None.

#### B. Paperwork Reduction Act Analysis

18. This NPRM 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).

#### C. Ex Parte Presentations

19. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.

#### D. Comment Filing Procedures

20. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 6, 2007, and reply comments June 13, 2007. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also

submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor 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, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

- **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). In addition, one copy of each pleading must be sent to each of the following:

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

- (2) Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–B540, Washington, DC 20554; e-mail: [Antoinette.Stevens@fcc.gov](mailto:Antoinette.Stevens@fcc.gov).

21. For further information regarding this proceeding, contact Ted Burmeister,

Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418–7389, or [theodore.burmeister@fcc.gov](mailto:theodore.burmeister@fcc.gov), or Katie King, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7491, or [katie.king@fcc.gov](mailto:katie.king@fcc.gov).

#### III. Ordering Clauses

22. Pursuant to the authority contained in sections 1, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 214, 254, and 403, this *Notice of Proposed Rulemaking* is adopted.

23. The Commission’s Consumer and 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. E7–9837 Filed 5–22–07; 8:45 am]

BILLING CODE 6712–01–P

---

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA–2003–15227]

### Federal Motor Vehicle Safety Standards; Hydraulic and Electric Brake Systems, Air Brake Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Denial of petition for reconsideration.

---

**SUMMARY:** This document responds to a petition for reconsideration of our 2003 final rule establishing a braking-in-a-curve performance requirement for single unit trucks and buses. The braking-in-a-curve requirement has been applied to air-braked truck tractors since 1997 and we determined that the requirement should also apply to single-unit trucks and buses. The requirement ensures that a vehicle’s antilock brake system (ABS) maintains adequate stability and control during a hard stop on a curved, slippery road surface. A petition for reconsideration was received from the National Truck Equipment Association (NTEA), which seeks to exclude vehicles built in two or