

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

Maps are available for inspection at the County Courthouse, 201 Laurel Avenue, Tillamook, Oregon.

Send comments to The Honorable Tim Josi, Chairperson, Tillamook County Board of Commissioners, 201 Laurel Avenue, Tillamook, Oregon 97141.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 7, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 01-469 Filed 1-8-01; 8:45 am]

**BILLING CODE 6718-04-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 64

[WT Docket No. 99-217; FCC 00-366]

#### Promotion of Competitive Networks in Local Telecommunications Markets

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission seeks comment on the current state of the evolving market for the provision of telecommunications services in multiple tenant environments (MTEs). The Commission also notes that a strong case can be made that it has authority to impose obligations on carriers to ensure nondiscriminatory access to MTEs. The Commission seeks comment on this legal argument, whether it would be prudent to exercise such authority, the potential scope of such requirements, and how such requirements could be implemented, if adopted. In addition, the Commission seeks further comment on several other potential actions that may be necessary in the event that competition in the MTE market does not develop sufficiently.

**DATES:** Comments are due on or before January 22, 2001; Reply comments are due on or before February 21, 2001. Comments from the public, OMB, and other agencies on the information collections contained in this document are due March 12, 2001.

**ADDRESSES:** Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW.; TW-A325; Washington, DC 20554. Comments filed through the

Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to [edward.springer@omb.eop.gov](mailto:edward.springer@omb.eop.gov).

#### FOR FURTHER INFORMATION CONTACT:

Lauren Van Wazer at (202) 418-0030 or Joel Taubenblatt at (202) 418-1513 (Wireless Telecommunications Bureau). For additional information concerning the information collection(s) contained in this document, contact Judy Boley at (202)-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Further Notice of Proposed Rulemaking in WT Docket No. 99-217, FCC 00-366, adopted October 12, 2000 and released October 25, 2000 ("Further NPRM"). This summary also reflects an order extending the pleading cycle for this proceeding issued on December 4, 2000 (DA 00-2720), and an erratum issued in this proceeding on December 20, 2000. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC and also may be purchased from the commission's copy contractor, International Transcription Services, (202) 857-3800, 445 12th Street, SW., CY-B400, Washington, DC 20554. The document is also available via the Internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00366.pdf>.

#### Paperwork Reduction Act

This Further NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, the Office of Management and Budget (OMB), and

other federal agencies to comment on the information collection(s) contained in this Further NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. It will be submitted to OMB for review under Section 3507(d) of the PRA. Public, OMB, and other agency comments are due March 12, 2001. 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.

A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to [edward.springer@omb.eop.gov](mailto:edward.springer@omb.eop.gov).

**OMB Control Number:** 3060-XXXX.

**Title:** Promotion of Competitive Networks in Local Telecommunications Markets.

**Form No.:** NA.

**Type of Review:** New collection.

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

**Number of Respondents:** 438.

**Estimated Time Per Response:** 120 hrs.

**Total Annual Burden:** 52,560 hrs.

**Total Annual Costs:** \$7,358,400.

**Needs and Uses:** The information will be used to guide the Commission as it continues to evaluate and monitor the need for a nondiscriminatory access requirement for MTEs.

#### Synopsis of Further Notice of Proposed Rulemaking

1. This Further Notice of Proposed Rulemaking ("Further NPRM") is part of a larger item in which the Commission

takes several targeted steps toward eliminating the existing bottlenecks to facilities-based competition in MTEs. In particular, this Further NPRM seeks comment on several potential modifications to the Commission's Rules in order to facilitate tenant choice of telecommunications providers in MTEs. Subsequent to this Further NPRM, the Commission will publish a First Report and Order, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order that adopts rules to facilitate the development of competitive telecommunications networks that will provide consumers with alternatives to services provided by the incumbent wireline local exchange carriers (LECs).

### Discussion

2. This Further NPRM seeks comment on the current state of the evolving market for the provision of telecommunications services in MTEs. The Further NPRM also notes that a strong case can be made that the Commission has authority to impose obligations on carriers to ensure nondiscriminatory access to MTEs. The Further NPRM seeks comment on this legal argument, whether it would be prudent to exercise such authority, the potential scope of such obligations, and how such obligations could be implemented.

3. In addition, the Further NPRM seeks comment on whether the Commission's prohibition of exclusive access contracts in commercial MTEs should be extended to residential MTEs, whether the Commission should prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs, whether the Commission should proscribe carriers from entering into contracts that grant them preferences other than exclusive access, such as exclusive marketing or landlord bonuses to tenants that use their services, in some or all situations, the definition of "rights-of-way" in MTEs to which a utility must allow access under 47 U.S.C. 224, and whether it should extend its cable inside wiring rules to facilitate the use of home run wiring by telecommunications service providers where an incumbent cable provider no longer has a legal right to maintain its home run wiring in the building.

### Filing Procedures

4. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 22, 2001, and reply comments on or before

February 21, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

5. 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 electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto: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.

6. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW-A325, Washington, DC 20554.

7. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW., CY-B400, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554.

8. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

### Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Competitive Networks Further Notice of Proposed Rulemaking (FNPRM), WT Docket No. 99-217. 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 Competitive Networks FNPRM provided above in paragraph 179 of the Competitive Networks FNPRM. The Commission will send a copy of the Competitive Networks FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, the Competitive Networks FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>3</sup>

#### A. Need for, and Objectives of, the Rules

10. In the Competitive Networks FNPRM, the Commission seeks comment on a number of proposals to further its ongoing efforts under the Telecommunications Act of 1996<sup>4</sup> to foster competition in local communications markets. Specifically, we seek comment on measures to ensure that competing telecommunications providers are able to provide services to customers in multiple tenant environments (MTEs). MTEs include apartment and office buildings, office parks, shopping centers, and manufactured housing communities. Each of the proposals in the Competitive Networks FNPRM is intended to benefit telecommunications carriers, building owners and their tenants by creating a more competitive MTE telecommunications service environment. The Competitive Networks FNPRM seeks comment on: (1) Whether we should require building owners, who allow access to their premises to any telecommunications provider, to make comparable access available to all providers on a nondiscriminatory basis; (2) whether we should prohibit local exchange carriers

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> See 5 U.S.C. 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56, codified at 47 U.S.C. 151 *et seq.* (1996 Act). The 1996 Act amended the Communications Act of 1934 (the "Communications Act" or the "Act").

from serving buildings that do not afford nondiscriminatory access to all telecommunications service providers; (3) whether we should forbid telecommunications service providers, under some or all circumstances, from entering into exclusive contracts with residential building owners; (4) whether we should prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs; (5) whether we should phase out exclusive access provisions by establishing a future termination date for such provisions; (6) whether we should phase out exclusive access provisions for carriers that qualify as small entities and the timing of any such phase out; (7) whether, and to what extent, preferential agreements between building owners and LECs should be regulated by the Commission; (8) whether the Commission's rules governing access to cable home run wiring for multichannel video program distribution should be extended to benefit providers of telecommunications services; and (9) the extent to which utility rights-of-way within MTEs are subject to access by telecommunications carriers (except incumbent LECs) and cable companies pursuant to section 224 of the Act.<sup>5</sup>

#### B. Legal Basis

11. The potential actions on which comment is sought in this Competitive Networks FNPRM would be authorized under Sections 1, 2(a), 4(i), 201(b), 202(a), 205(a), 224(d), 224(e), 303(r), and 411(a) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 201(b), 202(a), 205(a), 224(d), 224(e), 303(r), and 411(a), and Sections 1.411 and 1.412 of the Commission's Rules, 47 CFR 1.411 and 1.412.

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

12. The RFA requires that an IRFA be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>6</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>7</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the

Small Business Act.<sup>8</sup> A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>9</sup> For many of the entities described below, we utilize SBA definitions of small business categories, which are based on Standard Industrial Classification ("SIC") codes.

We have included small incumbent LECs in this present IRFA. 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."<sup>10</sup> The SBA 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.<sup>11</sup> We have therefore included small incumbent LECs in this IRFA, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

13. This Competitive Networks FNPRM proposes rule changes that, if adopted, would impose requirements that would affect on local exchange carriers and other utilities, building owners and managers, neighborhood associations, small governmental jurisdictions, cable operators, and wireless communications providers.

#### a. Local Exchange Carriers

14. Many of the potential rule changes on which comment is sought in this

<sup>8</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*."

<sup>9</sup> Small Business Act, 15 U.S.C. 632.

<sup>10</sup> 5 U.S.C. 601(3).

<sup>11</sup> SBA Reply Comments at 3-4 (filed Sept. 10, 1999). See also Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996).

Competitive Networks FNPRM, if adopted, would affect small LECs. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>12</sup> The SBA has defined establishments engaged in providing "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.<sup>13</sup> According to recent Telecommunications Industry Revenue data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.<sup>14</sup> We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,348 providers of local exchange service are small entities that may be affected by the potential actions discussed in this Further Notice of Proposed Rulemaking, if adopted.

#### b. Other Utilities

15. The proposals in the Competitive Networks FNPRM with respect to the application of Section 224 of the Act, if adopted, would affect utilities other than LECs. Section 224 defines a "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any state." The Commission anticipates that, to the extent its legal interpretation of Section 224 affects non-LEC utilities, the effect would be concentrated on electric utilities.

#### (1) Electric Utilities (SIC 4911, 4931 & 4939)

16. *Electric Services (SIC 4911)*. The SBA has developed a definition for

<sup>12</sup> See 13 CFR 121.201, SIC Code 4813.

<sup>13</sup> 13 CFR 121.201. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (1987 SIC Manual).

<sup>14</sup> FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000).

<sup>5</sup> 47 U.S.C. 224.

<sup>6</sup> 5 U.S.C. 605(b).

<sup>7</sup> 5 U.S.C. 601(6).

small electric utility firms.<sup>15</sup> The Census Bureau reports that a total of 1,379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues do not exceed five million dollars.<sup>16</sup> The Census Bureau reports that 447 of the 1,379 firms listed had total revenues below five million dollars in 1992.<sup>17</sup>

17. *Electric and Other Services Combined (SIC 4931)*. The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service.<sup>18</sup> The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues do not exceed five million dollars.<sup>19</sup> The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars in 1992.<sup>20</sup>

18. *Combination Utilities, Not Elsewhere Classified (SIC 4939)*. The SBA defines this type of utility as providing a combination of electric, gas, and other services that are not otherwise classified.<sup>21</sup> The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues do not exceed five million dollars.<sup>22</sup> The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars in 1992.<sup>23</sup>

(2) Gas Production and Distribution (SIC 4922, 4923, 4924, 4925 & 4932)

19. *Natural Gas Transmission (SIC 4922)*. The SBA's definition of a natural gas transmitter is an entity that is engaged in the transmission and storage of natural gas.<sup>24</sup> The Census Bureau reports that a total of 144 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small natural gas transmitter is an entity whose gross

revenues do not exceed five million dollars.<sup>25</sup> The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars in 1992.<sup>26</sup>

20. *Natural Gas Transmission and Distribution (SIC 4923)*. The SBA has classified this type of entity as a utility that transmits and distributes natural gas for sale.<sup>27</sup> The Census Bureau reports that a total of 126 such entities were in operation for at least one year at the end of 1992. The SBA's definition of a small natural gas transmitter and distributor is a firm whose gross revenues do not exceed five million dollars.<sup>28</sup> The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars in 1992.<sup>29</sup>

21. *Natural Gas Distribution (SIC 4924)*. The SBA defines a natural gas distributor as an entity that distributes natural gas for sale.<sup>30</sup> The Census Bureau reports that a total of 478 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small natural gas distributor is an entity whose gross revenues do not exceed five million dollars.<sup>31</sup> The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars in 1992.<sup>32</sup>

22. *Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution (SIC 4925)*. The SBA has classified this type of entity as a utility that engages in the manufacturing and/or distribution of the sale of gas.<sup>33</sup> These mixtures may include natural gas. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small mixed, manufactured or liquefied petroleum gas producer or distributor is a firm whose gross revenues do not exceed five million dollars.<sup>34</sup> The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars in 1992.<sup>35</sup>

23. *Gas and Other Services Combined (SIC 4932)*. The SBA has classified this entity as a gas company whose business is less than 95% gas, in combination

with other services.<sup>36</sup> The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small gas and other services combined utility is a firm whose gross revenues do not exceed five million dollars.<sup>37</sup> The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars in 1992.<sup>38</sup>

(3) Water Supply (SIC 4941)

24. The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use.<sup>39</sup> The Census Bureau reports that a total of 3,169 water utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small water utility is a firm whose gross revenues do not exceed five million dollars.<sup>40</sup> The Census Bureau reported that 3,065 of the 3,169 firms listed had total revenues below five million dollars in 1992.<sup>41</sup>

(4) Sanitary Systems (SIC 4952, 4953 & 4959)

25. *Sewerage Systems (SIC 4952)*. The SBA defines a sewage firm as a utility whose business is the collection and disposal of waste using sewage systems.<sup>42</sup> The Census Bureau reports that a total of 410 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sewerage system is a firm whose gross revenues did not exceed five million dollars.<sup>43</sup> The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars in 1992.<sup>44</sup>

26. *Refuse Systems (SIC 4953)*. The SBA defines a firm in the business of refuse as an establishment whose business is the collection and disposal of refuse "by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials."<sup>45</sup> The Census Bureau reports that a total of 2,287 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small refuse system is a firm whose gross

<sup>15</sup> 1987 SIC Manual.

<sup>16</sup> 16 13 CFR 121.201.

<sup>17</sup> U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D (Bureau of Census data under contract to the Office of Advocacy of the SBA) (1992 Economic Census Industry and Enterprise Receipts Size Report).

<sup>18</sup> 1987 SIC Manual.

<sup>19</sup> 13 CFR 121.201.

<sup>20</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>21</sup> 1987 SIC Manual.

<sup>22</sup> 13 CFR 121.201.

<sup>23</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>24</sup> 1987 SIC Manual.

<sup>25</sup> 13 CFR 121.201.

<sup>26</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>27</sup> 1987 SIC Manual.

<sup>28</sup> 13 CFR 121.201.

<sup>29</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>30</sup> 1987 SIC Manual.

<sup>31</sup> 13 CFR 121.201.

<sup>32</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>33</sup> 1987 SIC Manual.

<sup>34</sup> 13 CFR 121.201.

<sup>35</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>36</sup> 1987 SIC Manual.

<sup>37</sup> 13 CFR 121.201.

<sup>38</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>39</sup> 1987 SIC Manual.

<sup>40</sup> 13 CFR 121.201.

<sup>41</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>42</sup> 1987 SIC Manual.

<sup>43</sup> 13 CFR 121.201.

<sup>44</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>45</sup> 1987 SIC Manual.

revenues do not exceed six million dollars.<sup>46</sup> The Census Bureau reported that 1,908 of the 2,287 firms listed had total revenues below six million dollars in 1992.<sup>47</sup>

27. *Sanitary Services, Not Elsewhere Classified (SIC 4959)*. The SBA defines these firms as engaged in sanitary services.<sup>48</sup> The Census Bureau reports that a total of 1,214 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sanitary service firm's gross revenues do not exceed five million dollars.<sup>49</sup> The Census Bureau reported that 1,173 of the 1,214 firms listed had total revenues below five million dollars in 1992.<sup>50</sup>

(5) Steam and Air Conditioning Supply (SIC 4961)

28. The SBA defines a steam and air conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air.<sup>51</sup> The Census Bureau reports that a total of 55 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a steam and air conditioning supply utility is a firm whose gross revenues do not exceed nine million dollars.<sup>52</sup> The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars in 1992.<sup>53</sup>

(6) Irrigation Systems (SIC 4971)

29. The SBA defines irrigation systems as firms who operate water supply systems for the purpose of irrigation.<sup>54</sup> The Census Bureau reports that a total of 297 firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small irrigation service is a firm whose gross revenues do not exceed five million dollars.<sup>55</sup> The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars in 1992.<sup>56</sup>

c. Building Owners and Managers

30. Our proposals in the this Further Notice of Proposed Rulemaking regarding the scope of in-building

rights-of way under section 224 of the Act, termination or phasing out of exclusive contracts between commercial MTEs and telecommunications carriers, and nondiscriminatory access to MTEs, if adopted, would affect multiple dwelling unit operators and real estate agents and managers.

(1) Multiple Dwelling Unit Operators (SIC 6512, SIC 6513, SIC 6514)

31. The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings, and dwellings other than apartment buildings, which include all such companies generating \$5 million or less in revenue annually.<sup>57</sup> According to the Census Bureau, there were 26,960 operators of nonresidential buildings generating less than \$5 million in revenue that were in operation for at least one year at the end of 1992.<sup>58</sup> Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than \$5 million in revenue that were in operation for at least one year at the end of 1992.<sup>59</sup> The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

(2) Real Estate Agents and Managers (SIC 6531)

32. The SBA defines real estate agents and managers as establishments primarily engaged in renting, buying, selling, managing, and appraising real estate for others.<sup>60</sup> According to SBA's definition, a small real estate agent or manager is a firm whose revenues do not exceed 1.5 million dollars.<sup>61</sup>

d. Neighborhood Associations

33. Section 601(4) of the Regulatory Flexibility Act, 5 U.S.C. 601(4), defines "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." This definition includes homeowner and condominium associations that operate as not-for-

profit organizations. We note that these groups would be indirectly affected by our proposals. The Community Associations Institute estimates that there are 205,000 such associations.<sup>62</sup>

e. Municipalities

34. Our proposals in the this Competitive Networks FNPRM regarding the scope of in-building rights-of way under Section 224 of the Act, termination or phasing out of exclusive contracts between commercial MTEs and telecommunications carriers, and nondiscriminatory access to MTEs would, if adopted, affect municipalities. The term "small governmental jurisdiction" is defined as "governments of \* \* \* districts, with a population of less than 50,000."<sup>63</sup> As of 1992, there were approximately 85,006 governmental entities in the United States.<sup>64</sup> This number includes such entities as states, counties, cities, utility districts and school districts. Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566, or 96%, have populations of fewer than 50,000.<sup>65</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,606 (96%) are small entities.

f. Cable Services or Systems

35. Our proposals in the this Competitive Networks FNPRM regarding the scope of in-building rights-of way under Section 224 of the Act, nondiscriminatory access to MTEs, and extension of the cable home run wiring rule to telecommunications carriers, would, if adopted, affect owners and operators of cable systems. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.<sup>66</sup> This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788

<sup>46</sup> 13 CFR 121.201.

<sup>47</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>48</sup> 1987 SIC Manual.

<sup>49</sup> 13 CFR 121.201.

<sup>50</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>51</sup> 1987 SIC Manual.

<sup>52</sup> 13 CFR 121.201.

<sup>53</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>54</sup> 1987 SIC Manual.

<sup>55</sup> 13 CFR 121.201.

<sup>56</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

<sup>57</sup> 13 CFR 121.601 (SIC 6512, SIC 6513, SIC 6514).

<sup>58</sup> 1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report, Table 4, SIC 6512 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration) (1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report).

<sup>59</sup> 1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report, Table 4, SIC 6513.

<sup>60</sup> 1987 SIC Manual.

<sup>61</sup> 13 CFR 121.201.

<sup>62</sup> CAI Response to Competitive Networks NPRM IRFA at 5 (filed Aug. 27, 1999).

<sup>63</sup> 5 U.S.C. 601(5).

<sup>64</sup> U.S. Department of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>65</sup> Id.

<sup>66</sup> 13 CFR 121.201, SIC code 4841.

total cable and other pay television services and 1,423 had less than \$11 million in revenue.<sup>67</sup>

36. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.<sup>68</sup> Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.<sup>69</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

37. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>70</sup> The Commission has determined that there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.<sup>71</sup> Based on available data, we find that the number of cable operators serving 666,900 subscribers or less totals 1,450.<sup>72</sup> We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,<sup>73</sup> and thus are unable at

this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

#### g. Multipoint Distribution Service (MDS)

38. This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.<sup>74</sup> In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.<sup>75</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>76</sup> These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.<sup>77</sup> Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.<sup>78</sup> The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

#### h. Wireless Services

39. Many of the proposals in this Competitive Networks FNPRM, if enacted, could affect providers of wireless services regulated by the Commission.

40. *Broadband Personal Communications Service (PCS)*. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for

Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>79</sup> For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>80</sup> These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.<sup>81</sup> No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>82</sup> Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

41. *Cellular Licensees*. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>83</sup> According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.<sup>84</sup> Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according

<sup>67</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

<sup>68</sup> 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

<sup>69</sup> Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>70</sup> 47 U.S.C. 543(m)(2).

<sup>71</sup> 47 CFR 76.1403(b).

<sup>72</sup> Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>73</sup> We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to

Section 76.1403(b) of the Commission's rules. See 47 CFR 76.1403(d).

<sup>74</sup> For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

<sup>75</sup> 47 CFR 1.2110 (a)(1).

<sup>76</sup> Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

<sup>77</sup> 47 U.S.C. 309(j).

<sup>78</sup> *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36–39.

<sup>79</sup> See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket 90–314, *Report and Order*, 11 FCC Rcd 7824, 7850–52, paragraphs 57–60 (1996) (*Cross Ownership Report & Order*); see also 47 CFR 24.720(b).

<sup>80</sup> *Cross Ownership Report & Order*, 11 FCC Rcd at 7852, paragraph 60.

<sup>81</sup> See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84, paragraphs 114–20 (1994).

<sup>82</sup> FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

<sup>83</sup> 13 CFR 121.201, SIC code 4812.

<sup>84</sup> 1992 Census, Series UC92–S–1, at Table 5, SIC code 4812.

to the most recent Trends in Telephone Service data, 808 carriers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio Telephone (SMR) service, which are placed together in the data.<sup>85</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 808 or fewer small cellular service carriers that may be affected by any regulations adopted pursuant to this proceeding.

42. *Fixed Microwave Services.* Microwave services include common carrier,<sup>86</sup> private-operational fixed,<sup>87</sup> and broadcast auxiliary radio services.<sup>88</sup> At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with no more than 1,500 persons.<sup>89</sup> We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

43. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the

Rural Radiotelephone Service.<sup>90</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>91</sup> We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.<sup>92</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

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

44. The Competitive Networks FNPRM Rulemaking proposes no additional reporting, recordkeeping or other compliance measures. We note supra, however, that the Competitive Networks FNPRM seeks comment on termination or phase out of exclusivity and preferential provisions in contracts between telecommunications providers and MTEs.

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

45. 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 or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>93</sup>

46. In this Competitive Networks FNPRM, we seek comment on proposals that are intended to promote competition in local communications markets by ensuring that competing telecommunications providers are able to serve customers in MTEs. Specifically, we seek comment on the following proposals: (1) Whether we should require building owners, who allow access to their premises to any telecommunications provider, to make comparable access available to all providers on a nondiscriminatory basis;

(2) whether we should prohibit local exchange carriers from serving buildings that do not afford nondiscriminatory access to all telecommunications service providers; (3) whether we should forbid telecommunications service providers, under some or all circumstances, from entering into exclusive contracts with residential building owners; (4) whether we should prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs; (5) whether we should phase out exclusive access provisions by establishing a future termination date for such provisions; (6) whether we should phase out exclusive access provisions for carriers that qualify as small entities and the timing of any such phase out; (7) whether, and to what extent, preferential agreements between building owners and LECs should be regulated by the Commission; (8) whether the Commission's rules governing access to cable home run wiring for multichannel video program distribution should be extended to benefit providers of telecommunications services; and (9) the extent to which utility rights-of-way within MTEs are subject to access by telecommunications carriers (except incumbent LECs) and cable companies pursuant to Section 224 of the Act.<sup>94</sup> We anticipate that the proposals, if enacted in whole or in part, would benefit consumers, telecommunications carriers and building owners, including small entities.

#### *F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules*

47. None.

Federal Communications Commission.

**Shirley S. Suggs,**

*Chief, Publications Group.*

[FR Doc. 01-579 Filed 1-8-01; 8:45 am]

**BILLING CODE 6712-01-U**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AH68

#### Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Dolly Varden as Threatened in Washington Due to Similarity of Appearance to Bull Trout

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

<sup>85</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>86</sup> 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

<sup>87</sup> Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>88</sup> Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

<sup>89</sup> 13 CFR 121.201, SIC 4812.

<sup>90</sup> The service is defined in Section 22.99 of the Commission's Rules, 47 CFR 22.99.

<sup>91</sup> BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

<sup>92</sup> 13 CFR 121.201, SIC code 4812.

<sup>93</sup> 5 U.S.C. 603(c).

<sup>94</sup> 47 U.S.C. 224.