

Building, 1111 Constitution Avenue NW., Washington, DC. Because of the controlled access restrictions, attendants will not be admitted beyond the lobby area of the Internal Revenue Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

**Guy R. Traynor,**

*Acting Chief, Publication and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 05-19405 Filed 9-27-05; 8:45 am]

**BILLING CODE 4830-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R06-OAR-2005-TX-0016; FRL-7975-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Permits by Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision for the State of Texas. This action removes a provision from the Texas SIP which provided public notice and opportunity for public comment for concrete batch plants which were constructed under a permit by rule (PBR). On September 1, 2000, Texas replaced the PBR for concrete batch plants with a standard permit for concrete batch plants. The standard permit for concrete batch plants also requires public notice for concrete batch plant subject to the standard permit. Texas maintained the public notice requirements of its PBR to assure that proper procedures were followed for concrete batch plants that were permitted under the PBR prior to the effective date of the standard permit. All authorization requests for concrete batch plants which constructed under the PBR have now been resolved and the public notice and comment provisions under the PBR are no longer needed.

**DATES:** Written comments must be received on or before October 28, 2005.

**ADDRESSES:** Comments may be mailed to Mr. David Neleigh, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Stanley M. Spruiell, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7212; fax number (214) 665-7263; e-mail address [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: September 19, 2005.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 05-19357 Filed 9-27-05; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 20

[WT Docket No. 05-265, WT Docket No. 00-193; FCC 05-160]

#### Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Federal Communications Commission (FCC) initiated a new proceeding to examine whether its roaming requirements applicable to these CMRS providers should be modified, expanded, or eliminated given the current state of the CMRS market. In a related Memorandum Opinion and Order, the FCC terminated a pending proceeding without the adoption of rules concerning roaming requirements applicable to certain Commercial Mobile Radio Services (CMRS) providers because the record in that proceeding had become stale.

**DATES:** Comments due on or before November 28, 2005 and reply comments are due on or before December 27, 2005. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before November 28, 2005.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 05-265, 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.
- E-mail: Include the docket number(s) in the subject line of the message.
- 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.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act 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](mailto: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](mailto:Kristy_L._LaLonde@omb.eop.gov), or via fax at 202-395-5167.

**FOR FURTHER INFORMATION CONTACT:** Eli Johnson at (202) 418-1395,

*Eli.Johnson@fcc.gov*, or Won Kim (202) 418-1368, *Won.Kim@fcc.gov*, Wireless Telecommunications Bureau, Spectrum and Competition Policy Division. For additional information concerning the Paperwork Reduction Act 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, WT Docket No. 05-265, WT Docket No. 00-193, released August 31, 2005. The full text of the NPRM is available for public inspection on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

*Initial Paperwork Reduction Act of 1995 Analysis:* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed 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).

### Synopsis

1. In the Notice of Proposed Rule Making (NPRM), the FCC initiated a proceeding to examine whether its roaming requirements applicable to CMRS providers should be modified, expanded, or eliminated given the current state of the CMRS market.<sup>1</sup> In a related Memorandum Opinion and Order (MO&O), the FCC also terminated an existing proceeding without the adoption of rules that addressed similar issues because the record had become stale.<sup>2</sup> The FCC found that the tentative

<sup>1</sup> *See* In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers; Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 05-265, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, FCC 05-160 (rel. August 31, 2005) (NPRM).

<sup>2</sup> The terminated Notice of Proposed Rule Making was published in 65 FR 69891-01 (Nov. 21, 2000). *See* In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial

conclusions and proposed rules contained in the earlier item no longer reflect the current CMRS marketplace. Accordingly, the FCC terminated the earlier roaming proceeding in WT Docket No. 00-193.<sup>3</sup>

2. In the NPRM, the FCC seeks to develop a record with up-to-date information on the state of roaming in today's CMRS marketplace in order to determine what regulatory regime is currently appropriate for roaming services.<sup>4</sup> Accordingly, the NPRM discusses and seeks comment on issues related to manual and automatic roaming, including issues concerning roaming negotiations, small and rural carrier concerns, and technical considerations.

### Manual Roaming

3. The NPRM seeks up-to-date information on the practice of manual roaming and the continued utility of the manual roaming rule.<sup>5</sup> Specifically, the FCC seeks comment on how often subscribers avail themselves of manual roaming.<sup>6</sup> Given the evolution of the CMRS market and advancements in CMRS technologies, the NPRM asks, to what extent has manual roaming fallen into disuse or been replaced by automatic roaming? Further, given the role of manual roaming in today's marketplace, the FCC requests comment regarding whether the manual roaming rule should be eliminated, either in combination with the promulgation of an automatic roaming rule or without such a rule. Alternatively, should the manual roaming rule be kept as a fallback for consumers when automatic roaming is unavailable?<sup>7</sup> In recent merger orders, the FCC imposed a condition prohibiting the merged company from blocking manual roaming.<sup>8</sup> The FCC asks, therefore, to what extent is home carrier blocking of manual roaming a problem?<sup>9</sup> Is a rule change—as opposed to merger

Mobile Radio Services, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, FCC 00-361, 65 FR 69891-01.

<sup>3</sup> *See* NPRM at para. 18.

<sup>4</sup> *See* NPRM at para. 20.

<sup>5</sup> *Id.* at para. 22.

<sup>6</sup> *Id.* at para. 23.

<sup>7</sup> *Id.*

<sup>8</sup> *See* Application of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21592 para. 182 (2004); Application of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, FCC 05-138 at para. 108 (rel. July 19, 2005); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, FCC 05-148 at para. 127 (rel. Aug. 8, 2005).

<sup>9</sup> *See* NPRM at para. 23.

conditions—an appropriate way to address this issue?

4. Further, the FCC seeks comment on whether any manual roaming requirement that it retains or adopts should be subject to a sunset provision and, if so, when such a sunset should occur.<sup>10</sup> The FCC also asked whether any sunset of the manual roaming rule should be contingent upon adoption of an automatic roaming rule.

### Automatic Roaming

5. The NPRM seeks up-to-date information on automatic roaming that would enable the FCC to fully consider the question and reach an informed decision about whether to adopt an automatic roaming rule.<sup>11</sup> The NPRM invites interested parties to discuss in detail whether, in the absence of an automatic roaming requirement, there have been any CMRS industry changes and trends that have positively or negatively affected the availability of roaming to consumers. The FCC is interested in the effects that the existing roaming environment has on U.S. consumers.<sup>12</sup> For example, what effect has the existing roaming environment had on the availability, quality and price of services to consumers? Is there any disparate impact on consumers using services in rural areas? The FCC seeks comment on the availability of automatic roaming to consumers in the absence of an automatic roaming requirement. Are there instances in which providers refused to enter into automatic roaming agreements with other providers with compatible systems, or where they have discriminated with respect to the prices or other terms on which they make roaming agreements available to different carriers? The FCC also seeks comment on whether CMRS industry mergers could increase the incentive for large, nationwide carriers to deny automatic roaming agreements to their local or regional competitors. The NPRM seeks comment regarding evidence of discriminatory roaming practices on an industry-wide basis as well as on a market-specific basis. Commenters are invited to discuss the current availability of automatic roaming services in various regions with specific data, including the quality of services and the impact of roaming services on "dead spots" in many less populated areas.

6. The FCC requests that commenters address both the potential benefits of various regulatory options and the

<sup>10</sup> *Id.* at para. 24.

<sup>11</sup> *Id.* at para. 25.

<sup>12</sup> *Id.* at para. 27.

potential costs.<sup>13</sup> For example, would an automatic roaming rule create disincentives to the growth of facilities-based competition, or to the continued development of carriers with nationwide footprints? Would such a rule impede the development of new and improved roaming features? Are there new and improved roaming services that have developed over the past few years in the absence of an automatic roaming requirement? In addition, how would constraints imposed by any particular roaming rule affect the competitiveness of particular carriers? Would a nondiscrimination rule or any other automatic roaming rule thwart CMRS carriers' ability to compete vigorously on the basis of the particular roaming services provided, or otherwise impede carriers' ability to differentiate their roaming services? Would the costs of a rule impact small carriers disproportionately, such that some form of exemption for those carriers would be appropriate? The NPRM invites commenters to provide economic analysis and data regarding the potential benefits and costs of imposing an automatic roaming rule.

7. The NPRM also seeks comment on any administrative costs that would arise from a non-discrimination requirement or other automatic roaming rule, were such a rule to be implemented.<sup>14</sup> With respect to a potential non-discrimination requirement in particular, the FCC seeks comment on any burdens that would arise from the need to determine whether carriers seeking roaming agreements are "similarly situated."

8. The FCC also seeks comment on how to assess technical compatibility in an automatic roaming environment.<sup>15</sup> Under the existing manual roaming rule, the subscriber seeking to roam must first possess a handset that is technically capable of accessing the roamed-on system. Similarly, the FCC believes that if an automatic roaming requirement were imposed, the carrier seeking to enable its subscribers to roam on another system should have the burden of developing and implementing any technology that is necessary to achieve that result. In addition, the FCC stated that any automatic roaming rule should be sufficiently flexible to permit a carrier to change its system for legitimate business reasons (*e.g.*, increasing capacity, spectrum efficiency, fraud control, or deployment of enhanced features) without any obligation to make its system accessible

to roamers. At the same time it may be necessary within such a framework to adopt certain safeguards to ensure that a carrier takes reasonable actions to facilitate another carrier's efforts to achieve the capability to access its system. The FCC asked commenters to address whether and to what extent a carrier should be obligated to facilitate another carrier's efforts to access its system and invited comment on the possible design of a rule to balance these considerations, as well as on any other possible approaches.

9. In addition, the FCC seeks comment on whether carriers currently use any method to inform their subscribers about when they are roaming on another carrier's network and on whether the subscriber may incur additional charges as a result of such roaming.<sup>16</sup> The FCC invites comment on industry practices relating to consumer education about roaming. Further, the FCC seeks comment on any other issue that a commenter believes is important for the Commission to consider as it determines whether it would be in the public interest to impose an automatic roaming requirement on CMRS providers, including, for example, any concerns regarding subscriber privacy or carriers' control over proprietary information and whether any automatic roaming requirement that we adopt in this proceeding should be subject to a sunset provision and, if so, when such a sunset should occur.

#### *Roaming Agreements*

10. In the past, the FCC has suggested that one possible automatic roaming rule could require, as a condition of license, that covered providers that enter into roaming agreements with other such providers make like agreements available to similarly situated providers, where technically compatible handsets are being used, under non-discriminatory rates, terms, and conditions.<sup>17</sup> Such a rule could prevent established carriers from entering into favorable agreements with selected providers while unreasonably denying such agreements to similarly situated carriers. The FCC seeks comment on whether an anti-discrimination approach to automatic roaming is appropriate in the current marketplace, or whether any other approaches should be considered.<sup>18</sup>

11. To the extent that a CMRS provider engages in unreasonable and discriminatory behavior by refusing to

enter an automatic roaming agreement, the FCC also seeks comment on the adequacy of remedies under existing law, such as the means permitted under sections 201, 202, 208, 251, and 332 of the Act.<sup>19</sup> The FCC seeks general comment on whether the avenues of complaint and redress afforded by these sections provide sufficient and appropriate means of ensuring the development of automatic roaming services in a competitive CMRS market, or whether an automatic roaming requirement is necessary in order to serve the public interest.

12. Assuming that adoption of additional protections against discrimination is needed, the FCC seeks comment on whether an anti-discrimination approach to roaming should be examined on a nationwide or on a market-specific basis.<sup>20</sup> Should any automatic roaming rule require a carrier to enter an automatic roaming arrangement on a nondiscriminatory basis with a facilities-based competitor in the same market ("in-market" roaming)? For instance, do such agreements diminish carriers' incentives for building out their networks? The NPRM seeks comment on how an exception that permits carriers to deny roaming agreements to "in-market" competitors could be administered, given the different geographic scope of cellular, broadband PCS, and SMR licenses.

13. Similarly, the FCC seeks comment on whether providers should be permitted to offer roaming agreements to affiliates on different terms and conditions than to non-affiliates, or whether, instead, agreements favorable to affiliates constitute unreasonable, discriminatory behavior.<sup>21</sup> The FCC seeks comment on whether it would serve the public interest to require carriers to make roaming service available to other carriers in one-way agreements under the same terms and conditions as under reciprocal agreements. The FCC also requests comment on whether a carrier should be able to offer a lower rate to a geographically proximate carrier. In addition, the FCC requests comment as to what extent, if any, an automatic roaming rule should encompass requirements specifically affecting resellers, and on the costs and benefits of any such requirements. The NPRM invites commenters to provide economic analysis and data supporting their positions.

<sup>13</sup> *Id.* at para. 28.

<sup>14</sup> *Id.* at para. 29.

<sup>15</sup> *Id.* at para. 30.

<sup>16</sup> *Id.* at para. 31.

<sup>17</sup> *Id.* at para. 33.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at para. 34.

<sup>20</sup> *Id.* at para. 35.

<sup>21</sup> *Id.* at para. 36.

14. Finally, in the FCC proceeding addressing the Sprint-Nextel merger, SouthernLINC Wireless contended that it has been unable to negotiate a satisfactory roaming agreement with Nextel because the agreement restricts its subscribers to basic interconnected voice roaming and denies them access to push-to-talk, dispatch, or data roaming services.<sup>22</sup> The FCC seeks comment on whether such denial of access to roaming services harms competition or consumers and, if so, how any automatic roaming rule should be crafted to address the issue.<sup>23</sup> For example, should an automatic roaming rule require carriers to permit roaming access to all technical features of their systems, and/or require carriers to make the same features accessible to all of their roaming partners on a non-discriminatory basis? The NPRM invites commenters to provide economic and technical analysis and data supporting their positions, including information on how common practices such as those alleged by SouthernLINC are within the industry.

#### *Small and Rural Carrier Concerns*

15. In various Commission proceedings, small and rural wireless service providers have asserted that CMRS industry mergers have significantly reduced their nationwide roaming options.<sup>24</sup> The FCC seeks comment on these concerns raised by small and rural carriers.<sup>25</sup> The NPRM invites commenters to submit economic analysis and data regarding evidence of discriminatory or non-discriminatory roaming practices on an industry-wide basis, and the impact of such practices on consumers. If roaming rates are declining among carriers, is this due to a more robust CMRS market or, as small and rural carriers claim, from the dwindling number of nationwide carriers favoring one another in roaming agreements to the exclusion of other carriers? The FCC seeks specific evidence of wireless providers denying roaming agreements to other providers in a manner that harms consumers. The FCC also seeks comment on and evidence of whether large, nationwide carriers are preferring one another over other carriers in roaming agreements, and whether such a preference is a violation of Section 202 of the Communications Act.

16. In addition, the FCC seeks comment on whether large, nationwide

carriers are engaging in the practice of barring their subscribers' access to networks operated by other carriers.<sup>26</sup> If so, does this type of practice violate the spirit of the Commission's rule requiring carriers to provide roaming access by preventing subscribers from utilizing such a service? The NPRM invites comment on the assertion by small and rural carriers that large carriers are using their market power to develop one-sided roaming agreements, at terms more favorable to themselves. Should the FCC require nondiscriminatory, rather than one-sided, automatic roaming arrangements? In this regard, should large or nationwide carriers be required to make their networks available to all roaming partners on the same terms and conditions as they offer to their "most-favored" roaming partners. Finally, the FCC seeks comment on whether large, nationwide carriers control "bottleneck" facilities that impact the ability of customers to roam onto or off of small and rural wireless networks.

17. The FCC also seeks comment on whether the concerns raised by small and rural carriers should be examined on a regional or local basis.<sup>27</sup> The NPRM notes that RTG has proposed "an automatic roaming mandate" that would only be applicable to small and "rural" markets where roaming partner options are at a minimum.<sup>28</sup> RTG has also suggested in ex parte presentation that the Commission consider a "Tier IV" category of CMRS providers that would consist solely of CMRS carriers with 100,000 customers or less.<sup>29</sup> Under this proposal, Tier IV providers would be entitled to automatic roaming in rural markets with large, nationwide carriers at reasonable symmetrical rates as a "check" against the abuse of market power by large carriers where they dominate the market.<sup>30</sup> The FCC seeks comment on RTG's proposal.<sup>31</sup> Should the FCC consider an automatic roaming requirement specifically targeted to rural markets? If so, how should we define "rural" for this purpose? In the *Rural Report and Order*, the FCC established a baseline definition of "rural area" as "those counties (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data \* \* \*."<sup>32</sup> The FCC seeks

comment on whether the definition in the *Rural Report and Order* or any other definition would be appropriate for any automatic roaming obligations contemplated in this proceeding.

#### *Technical Considerations*

18. *Roaming on Enhanced Digital Networks.* Another consideration in determining the need for and design of any automatic roaming requirement is the recent development by carriers of enhanced digital networks.<sup>33</sup> If the FCC were to apply some form of automatic roaming requirement to 2G systems, it seeks comment on whether it should also apply to upgraded 2.5G or 3G systems as well.<sup>34</sup> In addition, the FCC seeks comment on what impact an automatic roaming requirement would have on the incentive of carriers to invest in such upgrades.<sup>35</sup> The FCC also seeks comment on whether a carrier that has upgraded its system should be required to enter into roaming agreements only with other carriers that have similarly upgraded their systems, or whether, alternatively, the Commission should require a carrier with 2.5 and 3G capabilities to enter into automatic roaming agreements with all or some subset of carriers (e.g., rural carriers) that employ the same digital technology (e.g., GSM or CDMA), even if the other carriers have not upgraded their systems.

19. The FCC also seeks comment on the effect that automatic roaming would have on the capacity of 2.5 and 3G networks and the ability of carriers to offer full access to their own customers.<sup>36</sup> The Commission stated it would be concerned if requiring a carrier to offer roaming service on its enhanced network to the customers of other carriers resulted in the carrier facing capacity constraints that adversely affect its own customers. The FCC therefore asks whether a carrier should have the right to limit access to its network by roamers, and what parameters should be considered as justification for such limits. The NPRM invites commenters to suggest specific standards for determining when the requirement should or should not apply.

20. *Roaming with Multi-Mode Handsets.* Another technical consideration in the context of roaming

<sup>22</sup> *Id.* at para. 42.

<sup>23</sup> *Id.* at para. 43.

<sup>24</sup> RTG, WT Docket No. 00-193, *Ex Parte*, filed June 28, 2005, at 1.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See NPRM at para. 43.

<sup>28</sup> See Facilitating the Provisions of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to

Provide Spectrum-Based Services, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-166, 19 FCC Rcd 19078, 19087 at para. 11 (2004), 69 FR 75144-01 (Dec. 15, 2004), 69 FR 75174-01 (December 15, 2004).

<sup>33</sup> See NPRM at para. 44.

<sup>34</sup> *Id.* at para. 44.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at para. 46.

<sup>22</sup> See SouthernLINC Wireless Reply Comments, WT Docket No. 05-63, at 5-6.

<sup>23</sup> See NPRM at para. 37.

<sup>24</sup> *Id.* at paras. 38-40.

<sup>25</sup> *Id.* at para. 41.

is that, in order for roaming on digital networks to be successful, a customer must have a handset that employs the same digital standard (e.g., GSM or CDMA) as the carrier on whose network the customer is roaming.<sup>37</sup> However, if, in the future, handsets become available that employ multiple digital technologies or software-defined radio capabilities, this may reduce or eliminate technical impediments to the subscribers of any carrier roaming on any other carrier's network. The FCC, therefore, seeks comment as to whether and how soon such technology developments may occur, and if so, what effect the availability of multi-technology handsets will have on carriers' roaming options (e.g., if multi-technology handsets were available, should we require carriers using CDMA technologies to enter into roaming agreements with GSM carriers)?<sup>38</sup>

21. *Roaming on Analog Networks.* In 2002, the Commission established February 18, 2008 as the sunset date for the requirement that cellular carriers provide analog service.<sup>39</sup> In light of the pending sunset of the analog requirement, the FCC seeks comment on whether it is necessary to extend any automatic roaming obligation that the Commission might adopt to analog networks. The FCC seeks comment on the extent to which analog systems are used in roaming today and whether there is a need to adopt automatic roaming for analog.

22. Also, in the past the FCC has considered the possible effect of mergers on the roaming market for those wireless telephony consumers who rely on analog service.<sup>40</sup> The FCC seeks comment on the extent to which roaming options will be affected once the analog requirement no longer exists.<sup>41</sup> This information is relevant to better assess the state of the CMRS market and whether analog sunset will affect the market conditions, in the near future, in a manner that would justify adoption of an automatic roaming rule for digital networks. The NPRM requests that parties comment on this change and

other technical changes and their possible effects on the roaming markets.

#### *Ex Parte Rules*

23. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's Rules. (See generally 47 CFR 1.1202, 1.1203, 1.1206.)

#### *Comment Period and Procedures*

24. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. 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 should 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).

#### *Initial Regulatory Flexibility Act Analysis*

25. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>42</sup> 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 (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 53 of the item, and they must have a separate and distinct heading designating them as responses to the IRFA. 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 accordance with the RFA.<sup>43</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>44</sup>

<sup>42</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601-612, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 1045-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>43</sup> See 5 U.S.C. 603(a).

<sup>44</sup> *Id.*

<sup>37</sup> *Id.* at para. 47.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at para. 48.

<sup>40</sup> *Id.* at para. 49.

<sup>41</sup> For example, a small cellular GSM carrier might now enter into a roaming agreement with a nationwide cellular CDMA carrier operating in its area because both provide analog service. However, when the analog requirement terminates, the nationwide carrier would only be able to enter into a roaming agreement with a small CDMA carrier in the area—if one exists—and the GSM carrier would only be able to have a roaming agreement with a nationwide GSM carrier—if one exists in the area.

### Need for and Objectives of the Proposed Rules

26. In the Memorandum Opinion and Order (MO&O) and NPRM, the Commission terminates the open proceeding relating to the automatic and manual roaming obligations of Commercial Mobile Radio Services (CMRS) providers in WT Docket No. 00–193, and initiates a new proceeding to examine whether its current rules regarding roaming requirements applicable to CMRS providers should be modified given the current state of the CMRS market. In the MO&O portion of the item, the Commission terminates its previous consideration of roaming issues in WT Docket No. 00–193, primarily on the basis that the comments filed and the matters at issue therein are now stale due to the passage of time and other regulatory and industry changes that have occurred since its commencement. As a result, the Commission decides to terminate the proceeding without the adoption of rules. The Commission also decides to initiate a NPRM in a new proceeding to examine CMRS roaming in a manner that takes into account current technological and market conditions. The Commission's decision will allow it to develop a record with up-to-date information regarding the state of today's CMRS marketplace in an effort to determine whether there is a need for a regulatory regime for roaming services.

27. Specifically, in the NPRM, the Commission seeks to establish a record on the current state of manual roaming and whether there is a continuing need for a manual roaming rule. The Commission also seeks comment on whether carriers should be required to enter into agreements to allow automatic roaming on their networks and, if so, how such a rule should be designed, to whom should it apply, and for what period of time. Furthermore, the Commission requests comment on whether national carriers are negotiating roaming agreements with small or rural carriers in an anti-competitive manner or are simply avoiding their networks altogether and, if so, whether the Commission should establish an automatic roaming rule that applies to a specific market or type of carrier and for what period of time. Finally, the Commission seeks to establish a record on whether digital network and handset technology has advanced enough that there are no longer technical limitations affecting the likely provision of roaming.

### Legal Basis

28. The potential actions on which comment is sought in this NPRM would be authorized under sections 1, 4(i), 201(b), 251(a), 253, 303(r), and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 251(a), 253, 303(r), and 332(c)(1)(B).

### Description and Estimate of the Small Entities Subject to the Rules

29. The RFA requires that an initial regulatory flexibility analysis 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>45</sup> The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>46</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>47</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>48</sup>

30. To assist the Commission in its analysis, commenters are requested to provide information regarding which CMRS entities would be affected by the regulations on which the Commission seeks comment in this NPRM. In particular, we seek estimates of how many small entities might be affected.

31. The possible sunset of the existing “manual” roaming rule, if adopted, would eliminate the requirement that covered cellular, broadband PCS and SMR carriers make service available to individual users upon request, so long as the roamer's handset is technically capable of accessing their services. Sunsetting of this rule would be expected to reduce the existing regulatory burden, if any, on small businesses that must comply with the requirements of the “manual” roaming rule.

<sup>45</sup> 47 U.S.C. 605(b).

<sup>46</sup> 5 U.S.C. 601(6).

<sup>47</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>48</sup> Small Business Act, 15 U.S.C. 632.

32. The “automatic” roaming regulations on which the Commission seeks comment, if adopted, would apply to providers of cellular, broadband PCS, and SMR services that offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

33. *Estimate for Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category “Cellular and Other Wireless Telecommunications.”<sup>49</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>50</sup> According to the Bureau of the Census, only twelve firms out of a total of 1,238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees.<sup>51</sup> Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers are small businesses under the SBA's definition.

34. In addition, we can assess data provided annually to the Commission by Telecommunications Relay Service (TRS) carriers. The TRS data compilation, published in the Commission's *Trends in Telephone Service*, groups together cellular, personal communications services, and specialized mobile radio telephony carriers into a single category called “Wireless Telephony.” As noted above, under the pertinent SBA small business size standard, a wireless business is small if it has 1,500 or fewer employees.<sup>52</sup> According to *Trends in Telephone Service* data, 447 carriers have reported that they provide Wireless Telephony.<sup>53</sup> Of that total, an estimated 245 are small providers, under the SBA size standard. Thus, we can estimate that the majority of such businesses are small.

35. Additionally, any rules adopted pursuant to this rulemaking will apply to cellular licensees only if they offer

<sup>49</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>50</sup> *Id.*

<sup>51</sup> U.S. Census Bureau, 1997 Economic Census, Information—Subject Series, Establishment and Firm Size, Table 5 (Employment Size of Firms Subject to Federal Income Tax), NAICS code 517212 (2002). The Census Bureau will be issuing 2002 Economic Census data relating to telecommunications entities in late 2004.

<sup>52</sup> 13 CFR 121.201, NAICS code 517212.

<sup>53</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, page 5–5 (May 2004). This source uses data that are current as of October 22, 2003.

real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Although the Commission does not have definitive information, we estimate that most or all small business cellular licensees offer services meeting this description.

36. *Estimate for Broadband PCS Licensees.* 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 has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>54</sup> For Block F, an additional small business size standard 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>55</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>56</sup> No small businesses within the SBA-approved small business size standards 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>57</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>58</sup>

37. Any rule modifications that will be made pursuant to this proceeding will apply to broadband PCS licensees only if they offer real-time, two-way

switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Although the Commission does not have definitive information, we estimate that most or all small business broadband PCS licensees offer services meeting this description.

38. *Estimate for SMR Licensees.* The Commission awards "small entity" bidding credits in auctions for SMR geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>59</sup> The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>60</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>61</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>62</sup>

39. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and

won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

40. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million.<sup>63</sup> One firm has over \$15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

41. Additionally, any rules adopted pursuant to this rulemaking will apply to SMR licensees only if they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Although the Commission does not have definitive information, we estimate that many small business SMR licensees do not offer services meeting this description. Nonetheless, in the absence of definitive information, we assume that all of the Commission's SMR licensees that are small businesses may be subject to any rules that may be adopted in this proceeding.

#### *Reporting, Recordkeeping, and Other Compliance Requirements*

42. The Commission anticipates that any rules that may be adopted pursuant to this Notice will impose at most only limited reporting or recordkeeping requirements. The only compliance costs likely to be incurred are administrative costs to ensure that an entity's practices are in compliance with the rule. The only compliance requirement of any possible new rules is that licensees subject to any automatic roaming requirement (*i.e.*, cellular licenses, broadband PCS licensees, and geographic area 800 MHz and 900 MHz SMR licensees that offer real-time, two-way, interconnected switched voice and data service) will need to provide non-discriminatory access to their wireless

<sup>54</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, FCC 96-278, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 paras. 57-60 (1996), 61 FR 33859 (July 1, 1996); see also 47 CFR 24.720(b).

<sup>55</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, *Report and Order*, 11 FCC Rcd 7824, 7852 para. 60.

<sup>56</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>57</sup> FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. January 14, 1997).

<sup>58</sup> See "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>59</sup> 47 CFR 90.814(b)(1).

<sup>60</sup> *Id.*

<sup>61</sup> See "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

<sup>62</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>63</sup> These incumbent entities, which were not subject to auctions, may also be assessed under the SBA's generic small business size standard for this category which is 1,500 or few employees.

systems via automatic roaming once they reach an agreement with any carrier to permit automatic roaming. As noted above in this IRFA and in the text of the NPRM, the Commission seeks comment on the potential costs of implementing an automatic roaming requirement in this context, including such potential costs on small business.<sup>64</sup>

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

43. 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>65</sup>

44. As noted, the possible sunset of the manual roaming rule, if adopted, would be expected to reduce any existing economic impact on small business. Therefore, the only possible negative economic impacts that might arise from this NPRM are those what would be associated with an "automatic" roaming rule.

45. However, as discussed in the NPRM, small and rural wireless service providers have requested that the Commission adopt an automatic roaming rule in some form. Small and rural service providers assert that CMRS industry mergers have significantly reduced their nationwide roaming options. With a reduced number of nationwide roaming partners available, small and rural carriers are concerned that the remaining nationwide carriers will be able to use increased market power to adversely affect roaming negotiations in the future. These carriers contend that the large nationwide service providers are able to exercise market power through an advantageous bargaining position that affects not just the ability of small and rural carriers to enter into roaming agreements, but the terms of such agreements. Small and rural carriers also claim that numerous incompatible technologies further reduce their bargaining power.

46. Additionally, small and rural carriers assert that the amount of

roaming traffic they exchange with other carriers has been significantly reduced as the large carriers enter into roaming agreements with other larger carriers and avoid roaming on smaller carriers' networks. These small carriers believe such behavior is indicative of a larger industry trend where the larger carriers have begun to favor each other to the exclusion of smaller competitors, ignoring high cost rural areas. These carriers state that a substantial portion of their revenue comes from roaming revenue and the loss of such revenue makes it difficult for them to remain viable. They assert that favorable deals between large carriers eliminate a vital source of revenue for small and rural carriers. Furthermore, small carriers contend that the large carriers' practice of negotiating favorable roaming deals with one another constitutes unreasonable discrimination in violation of section 202 of the Communications Act.

47. Small and rural carriers also assert that with industry consolidation, large carriers behave in an anti-competitive manner with respect to roaming. They contend that consolidation has allowed large, nationwide CMRS carriers to use their increased market power to demand asymmetrical roaming rates from small, rural carriers. In certain cases, they assert, rural carriers must pay over five times as much to allow their customers to roam on nationwide carrier networks as the nationwide carriers pay for their customers to roam on rural networks. They argue that these asymmetrical roaming rates harm rural consumers and prevent small and rural carriers from offering their rural subscribers viable nationwide service plans that would allow rural subscribers to roam on nationwide carriers' networks.

48. As a result of these assertions, the Commission seeks comment in the NPRM on the concerns raised by small and rural carriers. The Commission asks commenters to submit economic analysis and data regarding evidence of discriminatory or non-discriminatory roaming practices on an industry-wide basis, and the impact of such practices on consumers. The Commission requests information on whether roaming rates are declining among carriers, and, if so, whether this is due to a more robust CMRS market or, as small and rural carriers claim, from the dwindling number of nationwide carriers favoring one another in roaming agreements to the exclusion of other carriers. The Commission seeks specific evidence of wireless providers denying roaming agreements to other providers in a manner that harms the providers or consumers. The NPRM also seeks

comment on and evidence of whether large, nationwide carriers are preferring one another over other carriers in roaming agreements, and whether such a preference is a violation of section 202 of the Communications Act.

49. In addition, the Commission seeks comment on whether large, nationwide carriers are engaging in the practice of barring their subscribers' access to networks operated by other carriers. If so, the Commission asks, does this type of practice violate the spirit of its rule requiring carriers to provide roaming access by preventing subscribers from utilizing such a service? The Commission seeks comment on the assertion by small and rural carriers that large carriers are using their market power to develop one-sided roaming agreements, at terms more favorable to themselves. The NPRM asks whether the Commission should require nondiscriminatory, rather than one-sided, automatic roaming arrangements. In this regard, the NPRM asks whether large or nationwide carriers should be required to make their networks available to all roaming partners on the same terms and conditions as they offer to their "most-favored" roaming partners. Moreover, the Commission seeks comment on whether large, nationwide carriers control "bottleneck" facilities that impact the ability of customers to roam onto or off of small and rural wireless networks. Finally, the Commission also seeks comment on whether the concerns raised by small and rural carriers should be examined on a regional or local basis.

50. The Commission will draw on the information gained from comments filed in response to the NPRM when considering whether an automatic roaming rule should be promulgated, and if so, how it can best be drafted to minimize any costs placed on small businesses. For instance, the Commission asks whether the alternative of an exemption tailored for small business would be appropriate given the possible costs of an automatic roaming rule.<sup>66</sup>

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

51. None.

*Ordering Clauses*

52. Pursuant to sections 1, 4(i), 201(b), 251(a), 253, 303(r), and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 251(a), 253, 303(r), and 332(c)(1)(B), and sections 1.411 and 1.412 of the

<sup>64</sup> See NPRM at paras. 28, 38–43.

<sup>65</sup> 5 U.S.C. 603(c).

<sup>66</sup> See NPRM at para. 28.

Commission's rules, 47 CFR 1.411 and 1.412, the Memorandum Opinion & Order and Notice of Proposed Rulemaking *is adopted*.

53. Pursuant to sections 4(i), 201(b), 251(a), 253, 303(r) and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 251(a), 253, 303(r) and 332(c)(1)(B), and sections 1.411 and 1.412 of the Commission's rules, 47 CFR 1.411 and 1.412, the automatic and manual roaming rulemaking proceeding in WT Docket No. 00-193 *is terminated*.

54. The Petition for Commission Action filed by the Rural Telecommunications Group, Inc. on November 1, 2004 *is granted*, to the extent described in the Notice of Proposed Rulemaking.

55. Notice is given of the proposed regulatory changes described in this Notice of Proposed Rulemaking, and comment is sought on these proposals.

56. 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. 05-19346 Filed 9-27-05; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 23

[IB Docket No. 05-216; FCC 05-130]

#### Elimination of Part 23 of the Commission's Rules and Spectrum Usage by Satellite Network Earth Stations and Space Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission (FCC) proposed to eliminate part 23 of the Commission's rules, governing International Fixed Public Radiocommunication Services (IFPRS). We instead propose to regulate IFPRS services pursuant to part 101, which includes rules applicable to other fixed services. This should simplify the Commission's rules and eliminate necessary burdens on IFPRS licenses.

**DATES:** Comments are due on or before October 28, 2005 and reply comments are due on or before November 14, 2005.

**ADDRESSES:** You may submit comment, identified by [docket number and/or rulemaking number], 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 detail instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Steven Spaeth (202) 418-1539, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202-418-0214, or via the Internet at [Judith.B.Herman@fcc.gov](mailto:Judith.B.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in IB Docket No. 05-216, adopted June 20, 2005 and released on June 24, 2005. The full text of the Notice of Proposed Rulemaking is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or via e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

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 collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due November 28, 2005. 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."

#### Summary of Notice of Proposed Rulemaking

##### A. Elimination of Part 23

1. At this time, we initiate a new proceeding to propose eliminating part 23 completely and applying the requirements of part 101 of the Commission's rules to IFPRS services. Part 101 establishes procedures for many terrestrial fixed services other than IFPRS. The Commission created part 101 in 1996, to replace parts 21 and 94 of the Commission's rules. Eliminating part 23 of the Commission's rules and including IFPRS services in the part 101 framework might serve the same purposes. In addition, eliminating distinctions in regulation between international and domestic fixed public radio services would be consistent with the Commission's elimination of such distinctions in fixed satellite service regulations.

2. Specifically, we proposed allowing future IFPRS licensees to apply for a license pursuant to the rules in part 1, subpart F, "Wireless Telecommunications Services Applications and Proceedings." In addition, we invite comments on revising § 101.147 of the Commission's rules to require any future IFPRS licenses to operate in the 3700-4200 MHz and the 10,700-11,700 MHz bands. These bands are available for fixed microwave services, and are currently shared with IFPRS. The 2110-2130 MHz and 2160-2180 MHz bands are also currently assigned to fixed microwave services and shared with IFPRS, but we proposed eliminating the assignment of these bands to IFPRS in part 101 of the Commission's rules because these bands are in the process of a transition to a reassignment to emerging technology (ET). Together with these revisions to part 101 of the Commission's rules, we also propose revising the Table of Frequency of Allocation to eliminate reference to part 23 in Column 6 and to