

designated for use in areas of Alaska not accessible by the Federal Aid Highway System, and is used in areas of Alaska not accessible by the Federal Aid Highway System, is exempt from the sulfur standard of 40 CFR 80.29(a)(1), the dye provisions of 40 CFR 80.29(a)(3) and 40 CFR 80.29(b), and the motor vehicle diesel fuel standards under 40 CFR 80.520 and associated requirements, provided that:

(1) The exempt fuel is not used in 2007 and later model year highway vehicles and engines,

(2) The exempt fuel is segregated from nonexempt highway diesel fuel from the point of such designation; and

(3) On each occasion that any person transfers custody or title to the exempt fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating:

“This fuel is for use only in those areas of Alaska not accessible by the FAHS”.

(4) The exempt fuel must meet the labeling requirements under § 80.570, except the following language shall be substituted for the language on the labels:

“HIGH SULFUR DIESEL FUEL (may be greater than 15 Sulfur ppm)

**WARNING**

Federal Law prohibits use in model year 2007 and later highway diesel vehicles and engines. Its use may damage these vehicles and engines.”

(e) Beginning on the following implementation dates, motor vehicle diesel fuel that is designated for use in areas of Alaska not accessible by the Federal Aid Highway System, or is used in areas of Alaska not accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and non-motor vehicle diesel fuel:

(1) June 1, 2010 for diesel fuel produced or imported by any refiner or importer,

(2) August 1, 2010 at all downstream locations, except at retail facilities and wholesale-purchaser consumers,

(3) October 1, 2010 at retail facilities and wholesale-purchaser consumers, and

(4) December 1, 2010 at all locations.

3. Section 69.52 is amended as follows:

- a. By adding paragraph (a)(4).
- b. By revising paragraphs (c)(1) and (c)(2).
- c. By revising paragraphs (f) and (g).
- d. By adding paragraph (h).

**§ 69.52 Non-motor vehicle diesel fuel.**

(a) \* \* \*  
(4) Heating oil has the meaning given in 40 CFR 80.2.

\* \* \* \* \*

(c) \* \* \*  
(1) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the red dye requirements, and the presumptions associated with the red dye requirements, under 40 CFR 80.520(b)(2) and 80.510(d)(5), (e)(5), and (f)(5).

(2) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the marker solvent yellow 124 requirements, and the presumptions associated with the marker solvent yellow 124 requirements, under 40 CFR 80.510(d) through (f).

\* \* \* \* \*

(f) Non-motor vehicle diesel fuel and heating oil that is intended for use and used only in areas of Alaska not accessible by the Federal Aid Highway System, are excluded from the applicable provisions of 40 CFR Part 80, Subpart I and 40 CFR Part 60, Subpart III until the implementation dates specified in paragraph (g) of this section, except that:

(1) All model year 2011 and later nonroad and stationary diesel engines and equipment must be fueled only with diesel fuel that meets the specifications for NR fuel in 40 CFR 80.510(b) or (c);

(2) The following language shall be added to any product transfer document: “This fuel is for use only in those areas of Alaska not accessible by the FAHS;” and

(3) Pump labels for such fuel that does not meet the specifications of 40 CFR 80.510(b) or 80.510(c) shall contain the following language:

“HIGH SULFUR DIESEL FUEL (may be greater than 15 Sulfur ppm)

**WARNING**

Federal Law prohibits use in model year 2007 and later highway diesel vehicles and engines, or in model year 2011 and later nonroad diesel engines and equipment. Its use may damage these vehicles and engines.”

(g) *NRLM standards.* (1) Beginning on the following implementation dates, NRLM diesel fuel that is used or intended for use in areas of Alaska not accessible by the Federal Aid Highway System is subject to the provisions of 40 CFR part 80, subpart I, except as provided in paragraphs (c), (d), (e), and (g)(2) of this section:

(i) June 1, 2010 or diesel fuel produced or imported by any refiner or importer,

(ii) August 1, 2010 at all downstream locations, except at retail facilities and wholesale-purchaser consumers,

(iii) October 1, 2010 at retail facilities and wholesale-purchaser consumers, and

(iv) December 1, 2010 at all locations.  
(2) The per-gallon sulfur content standard for all LM diesel fuel shall be 15 ppm maximum.

(3) Diesel fuel used in new stationary internal combustion engines regulated under 40 CFR Part 60 Subpart III shall be subject to the fuel-related provisions of that subpart beginning December 1, 2010.

(h) Alternative labels to those specified in paragraphs (e)(3) and (f)(2) of this section may be used as approved by the Administrator.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

[ET Docket No. 04–295; RM–10865; FCC 05–153]

**Communications Assistance for Law Enforcement Act and Broadband Access and Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission (Commission) initiates this rulemaking to explore whether the Communications Assistance for Law Enforcement Act (CALEA) should apply to providers of voice over Internet Protocol (VoIP) services that are not interconnected, meaning VoIP services that do not allow users generally to receive calls originating from and to terminate calls to the public switched telephone network (PSTN). This rulemaking will also explore the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers of facilities-based broadband Internet access services. This rulemaking will enhance public safety and ensure that the surveillance needs of law enforcement agencies continue to be met as Internet-based communications technologies proliferate.

**DATES:** Comments are due on or before November 14, 2005, and reply comments are due on or before December 12, 2005.

**ADDRESSES:** You may submit comments, identified by ET Docket No. 04–295, by any of the following methods:

• Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Agency Web Site: <http://www.fcc.gov>. Follow the instructions for submitting comments on <http://www.fcc.gov/cgb/ecfs/>.

• E-mail: [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.

• Mail: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

• Hand Delivery/Courier: 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs/>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go <http://www.fcc.gov/cgb/ecfs/>.

**FOR FURTHER INFORMATION CONTACT:**

Carol Simpson, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-2391.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking in ET Docket No. 04-295, FCC 05-153, adopted August 5, 2005, and released September 23, 2005. The complete text of this FNPRM is available for inspection and copying during normal business hours in 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., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

**Public Participation**

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, May 1, 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.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties should also send a copy of their filings to Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C140, 445 12th Street, SW., Washington, DC 20554, or by e-mail to [janice.myles@fcc.gov](mailto:janice.myles@fcc.gov). Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

**Synopsis of the Further Notice of Proposed Rulemaking**

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek comment on two aspects of the conclusions reached in the Order accompanying this FNPRM, which is published elsewhere in this issue of the **Federal Register**. In the Order, we conclude that providers of facilities-based broadband Internet access services and providers of interconnected VoIP services—meaning VoIP service that allows a user generally to receive calls originating from and to terminate calls to the PSTN—must comply with CALEA. In the FNPRM, we first ask, with respect to interconnected VoIP, whether we should extend CALEA obligations to providers of other types of VoIP services. Specifically, are there any types of "managed" VoIP service that are not covered by today's Order, but that should be subject to CALEA?

2. Second, some commenters in this proceeding have argued that certain classes or categories of facilities-based broadband Internet access providers—notably small and rural providers and providers of broadband networks for educational and research institutions—should be exempt from CALEA. We reach no conclusions in the Order accompanying this FNPRM about the merits of these arguments, as we believe that additional information is necessary before reaching a decision. In this FNPRM, we seek comment on what procedures, if any, the Commission should adopt to implement CALEA's exemption provision. In addition, we seek comment on the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, as well as the best way to impose different compliance standards.

3. Section 102(8)(C)(ii) of CALEA provides the Commission with authority to grant exemptions from CALEA for entities that would otherwise fall within the definition of "telecommunications carrier" under section 102(8)(A) or (B). Specifically, section 102(8)(C)(ii) excludes from CALEA's definition of

telecommunications carrier “any class or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General.” The Commission has never exempted telecommunications carriers under this provision, nor has it adopted specific procedures for doing so. We therefore seek comment on what procedures, if any, the Commission should adopt for exempting entities under section 102(8)(C)(ii). In particular, we seek comment on how the phrase “by rule” should be interpreted. In addition, CALEA’s exemption provision requires “consultation with the Attorney General.” The Commission has implemented other statutory provisions requiring consultation with the Attorney General and we ask commenters to consider whether we should interpret “consultation” for purposes of CALEA in a similar manner considering the unique expertise of the Attorney General’s office in combating crime, supporting homeland security, and conducting electronic surveillance.

4. To the extent that the Commission determines that a class or category of providers is exempt under section 102(8)(C)(ii), does that mean the class or category of telecommunications carriers is exempted indefinitely from CALEA compliance? Can or should the Commission limit the exemption for a certain period of time, requiring exempted entities to demonstrate that continued exemption is warranted at some future time? Commenters should consider these and any other issues that may be relevant to granting an exemption request.

5. Commenters addressing exemptions from CALEA understandably focused on section 102(8) of CALEA, which authorizes the Commission to exclude providers from the definition of telecommunications carrier. But our examination of the record has made us curious about the possibility of taking a different approach to this issue. Specifically, we seek comment on whether it might be preferable to define the requirements of CALEA differently for certain classes of providers, rather than exempting those providers from CALEA entirely. Does the Commission have authority to create different compliance requirements for different types of providers? Would this approach be consistent with the language of the statute? Would it satisfy the needs of law enforcement, as well as the classes of providers seeking exemptions? What advantages and disadvantages would this approach have compared to granting exemptions under section 102(8)(C)?

### **Initial Paperwork Reduction Act of 1995 Analysis**

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

### **Initial Regulatory Flexibility Analysis**

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from today’s FNPRM. 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 FNPRM provided above. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### *1. Need for, and Objectives of, the Proposed Rules*

8. In the FNPRM, we seek comment on two aspects of the conclusions reached in the Order accompanying this FNPRM. First, with respect to interconnected VoIP, we seek comment on whether we should extend CALEA obligations to providers of other types of VoIP services. Specifically, we ask whether there any types of “managed” VoIP service that are not covered by today’s Order, but that should be subject to CALEA. Second, some commenters in this proceeding have argued that certain classes or categories of facilities-based broadband Internet access providers—notably small and rural providers and providers of broadband networks for educational and research institutions—should be exempt from CALEA. We reach no conclusions in today’s Order about the merits of these arguments, as we believe that additional information is necessary before reaching a decision. However, the Commission seeks comment on what procedures, if any, the Commission should adopt to implement CALEA’s exemption provision. In addition, the Commission seeks comment on the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, as well as the best way to impose different compliance

standards. Our objective is to adopt streamlined exemption procedures, which will ultimately benefit both large and small entities alike and is also a concerted effort by the Commission to adopt any other rules that will reduce CALEA burdens on small entities or other categories of telecommunications carriers.

#### *2. Legal Basis*

9. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 4(i), 7(a), 229, 301, 303, 332, and 410 of the Communications Act of 1934, as amended, and section 102 of the Communications Assistance for Law Enforcement Act, 18 U.S.C. 1001.

#### *3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules May Apply*

10. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). This FNPRM might, in theory, reach a variety of industries; out of an abundance of caution, we have attempted to cast a wide net in describing categories of potentially affected small entities. We would appreciate any comment on the extent to which the various entities might be directly affected by our action.

#### *a. Telecommunications Service Entities*

11. *Wireline Carriers and Service Providers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small

incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

13. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action. In addition, limited

preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

14. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

15. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

16. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than

1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

17. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 88 are estimated to have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

18. *Wireless Telecommunications Service Providers*. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

19. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional

12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of paging providers decreased approximately 51 percent from 1997 to 2002. In addition, limited preliminary census data for 2002 indicate that the total number of cellular and other wireless telecommunications carriers increased approximately 321 percent from 1997 to 2002.

20. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 260 of these are small, under the SBA small business size standard.

21. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category, "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. In the Paging Third Report and Order, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and

installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 370 are small, under the SBA-approved small business size standard.

22. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity.

23. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 437 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 260 of these are small under the SBA small business size standard.

24. *Broadband Personal Communications Service.* The broadband Personal Communications Service (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. 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." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. 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. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

#### b. Cable Operators

25. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

26. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under

the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. 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, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

27. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, 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." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

#### c. Internet Service Providers

28. *Internet Service Providers*. The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had

annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of Internet service providers increased approximately five percent from 1997 to 2002.

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

29. In the FNPRM, we seek comment on whether we should extend CALEA obligations to providers of other types of VoIP services. We also seek comment on what procedures, if any, the Commission should adopt to implement CALEA's exemption provision. In addition, we seek comment on the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, as well as the best way to impose different compliance standards. These proposals do not impose reporting or recordkeeping requirements that would be subject to the Paperwork Reduction Act. Therefore, we have not attempted here to provide an estimate in terms of burden hours. Rather, we are asking commenters to provide the Commission with reliable information and comments on any costs and burdens on small entities.

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

30. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (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.

31. In the FNPRM, with respect to interconnected VoIP, we seek comment on whether we should extend CALEA obligations to providers of other types of VoIP services. Specifically, we invite comment as to whether there are any types of "managed" VoIP service that are not covered by today's Order, but that should be subject to CALEA. For purposes of this IRFA, we specifically

seek comment from small entities on these issues, in particular, on the extent to which any "managed" VoIP service that the Commission may find subject to CALEA could impact them economically.

32. In the FNPRM, the Commission also considers and asks questions about two alternative approaches to requiring full CALEA compliance to address the impact of CALEA applicability on small entities. First, it addresses an exemption process. Next, it addresses the possibility of requiring something less than full CALEA compliance for small entities. Finally, it asks commenters to propose any other alternatives that have not been considered or identified.

33. The FNPRM seeks comment on what procedures, if any, the Commission should adopt to implement CALEA's exemption provision. Section 102(8)(C)(ii) excludes from CALEA's definition of telecommunications carrier "any class or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General." In addition, we seek comment on the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, as well as the best way to impose different compliance standards. Our goal is to adopt streamlined exemption procedures or any other rules that will ultimately assist the Commission in reducing burdens on small entities or other categories of telecommunications carriers.

34. With respect to the exemption provision, the Commission has never exempted telecommunications carriers under this provision, nor has it adopted specific procedures for doing so. We seek comment on what procedures, if any, the Commission should adopt for exempting entities under section 102(8)(C)(ii). In the FNPRM, the Commission evaluates how to properly interpret the provision. We seek comment, for example, on how the phrase "by rule" should be interpreted, as we recognize that the Commission's interpretation of this phrase could create burdens for small entities.

35. In addition, we seek comment on the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, as well as the best way to impose different compliance standards. The Commission seeks comment on significant alternatives and recommends that small entities file comments in response to the FNPRM. We anticipate that the record will be developed concerning alternative ways

in which the Commission could lessen the burden on classes of carrier or entities and will most likely benefit small entities more, relative to large entities.

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

36. None.

**Ordering Clauses**

37. *It is ordered* that that pursuant to sections 1, 4(i), 7(a), 229, 301, 303, 332, and 410 of the Communications Act of 1934, as amended, and section 102 of the Communications Assistance for Law Enforcement Act, 18 U.S.C. 1001, the Further Notice of Proposed Rulemaking in ET Docket No. 04–295 is adopted.

38. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further 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. 05–20607 Filed 10–12–05; 8:45 am]

**BILLING CODE 6712–01–P**

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 21**

**RIN 1018–A197**

**Migratory Bird Permits; Educational Use Permits**

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** We are soliciting public comments to help us develop permit regulations governing possession of live migratory birds and eagles for educational use.

**DATES:** Written comments should be submitted by December 12, 2005, to the address below.

**ADDRESSES:** You may mail or deliver comments to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MBSP 4107, Arlington, Virginia 22203. You also may submit comments via the Internet to:

*MB\_education@fws.gov.* See

**SUPPLEMENTARY INFORMATION** for file

formats and other information about electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service; (703) 358–1714.

**SUPPLEMENTARY INFORMATION:** Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation that we have received your message, contact us directly at (703) 358–1714.

**Background**

This scoping notice is intended to help the U.S. Fish and Wildlife Service (the Service) gather information and suggestions about current practices and public views regarding educational use of live migratory birds and eagles, in anticipation of drafting new permit regulations for possession of migratory birds and eagles for educational purposes. Feedback from this notice will enable us to propose regulations that will already have benefited from input from the regulated community. (The proposed regulations will then be subject to the standard public notice and comment for purposes of crafting final regulations.)

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits possession of any bird listed under treaties between the United States and Canada, Mexico, Japan, and Russia. Birds protected by the MBTA are referred to as “migratory birds.” In order to possess migratory birds or their parts or feathers for use in educational programs, you must obtain a permit from the Service (unless you are an institution exempted from the permit requirement under 50 CFR 21.12(b)). The Service issues such permits to authorize educational programs and exhibits that use nonreleasable or captive-bred migratory birds to teach people about migratory bird conservation and ecology. Permits are also required to possess migratory bird parts and feathers for educational use; however, at this time, we seek input only on issues pertaining to possession of live migratory birds and eagles for educational use.

Currently, because no regulations pertain specifically to educational use permits, educational activities that involve migratory birds are authorized by issuance of a special purpose permit under 50 CFR 21.27. That miscellaneous permit category is used to authorize activities not specifically addressed in existing migratory bird permit

regulations. In the absence of specific regulations addressing educational activities using migratory birds, the terms and requirements governing educational activities using migratory birds are currently promulgated via a list of standard conditions that are issued with each permit. Approximately 1200 permits for possession of live birds (including eagles) for educational use are currently active.

In a future rulemaking, we intend to propose a new permit regulation that will incorporate many of the longstanding policies and practices that are the basis of the current special purpose—education permit conditions. However, those conditions have never been the subject of notice and comment and may benefit from revision as a result of public input. Also, the special purpose—education permit conditions are not specific enough to provide sufficient guidance to the Service or to permittees to address many of the issues that arise in the regulation of possession of migratory birds for educational purposes. By creating a new permit category specifically for this purpose, the Service hopes to bring specificity and clarity to this area of migratory bird use.

As part of that same rulemaking, we intend to revise permit regulations governing exhibition of bald and golden eagles for educational purposes. Eagle permits are addressed through separate regulations from those governing educational use of other migratory birds because, in addition to the MBTA, eagles are further protected by the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668), which contains different, more restrictive provisions than the MBTA. We anticipate that the new proposed eagle exhibition regulations will incorporate by reference the regulations proposed for non-eagle migratory bird educational use, but with some variations that will be necessary to comply with the BGEPA.

Despite the differences between the MBTA and the BGEPA, many of the same issues arise in developing educational use regulations for eagles as for other migratory birds. Most of the questions we pose in this scoping notice are not addressed directly by either the MBTA or the BGEPA. For this reason, we are soliciting input regarding both eagles and other migratory birds on each question, except where specifically noted.

Regarding what the educational use permits will or will not authorize, some longstanding Service positions are well-established, based on traditional and/or existing precedents, while other issues