

## Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13–137 to read as follows:

#### § 165.T13–137 Safety Zone; North Jetty, Named the Barview Jetty, Tillamook Bay, OR.

(a) *Location.* The following area is a safety zone: All waters within 250 feet in every direction of the north jetty, named the Barview Jetty, near Tillamook Bay, Oregon starting at latitude 45°34′12″ N, longitude 123°57′31″ W; thence heading offshore to latitude 45°34′12″ N, longitude 123°57′02″ W; thence across the tip of the jetty to latitude 45°34′17.5″ N, longitude 123°57′02″ W; thence back inland to latitude 45°34′15″ N, longitude 123°57′31″ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in paragraph (a) of this section or bring, cause to be brought, or allow to remain in the safety zone created in paragraph (a) of this section any vehicle, vessel or object unless authorized by the Captain of the Port or his designated representative.

(c) *Effective Period.* The safety zone created in paragraph (a) of this section will be in effect from 12:01 a.m. June 15, 2010 until 11:59 p.m. September 30, 2010.

Dated: April 14, 2010.

**F.G. Myer,**

*Captain, U.S. Coast Guard, Captain of the Port, Portland.*

[FR Doc. 2010–9839 Filed 4–27–10; 8:45 am]

**BILLING CODE 9110–04–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 20

[WT Docket No. 05–265; FCC 10–59]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission addresses in this Second Further Notice of Proposed Rulemaking (Second FNPRM) whether to extend roaming obligations to data services that are provided without interconnection to the public switched network—including mobile broadband services.

**DATES:** Interested parties may file comments on or before June 14, 2010, and reply comments on or before July 12, 2010.

**ADDRESSES:** 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://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *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. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail

and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

**FOR FURTHER INFORMATION CONTACT:** For further information concerning this proceeding, please contact Peter Trachtenberg, Spectrum and Competition Policy Division at 202-418-7369, Christina Clearwater, Spectrum and Competition Policy Division at 202-418-1893 or Nese Guendelsberger, Spectrum and Competition Policy Division at 202-418-0634.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's rules noted in the Order on Reconsideration and Second Further Notice of Proposed Rulemaking in WT Docket No. 05-265; FCC 10-59, adopted April 21, 2010, and released on April 21, 2010. This summary should be read with its companion document, the Order on Reconsideration summary published elsewhere in this issue of the **Federal Register**. The full text of the Order on Reconsideration and Second Further Notice of Proposed Rulemaking is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com>; or by calling (800) 378-3160, facsimile (202) 488-5563, or e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com). Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 05-265. Additionally, the complete item is available on the Federal Communications Commission's Web site at <http://www.fcc.gov>.

## Synopsis of the Second Further Notice of Proposed Rulemaking Section of the Order on Reconsideration and Second Further Notice of Proposed Rulemaking

### I. Introduction

1. In this Second FNPRM, the Commission seeks additional comment on whether to extend automatic roaming obligations to certain mobile data services—specifically, mobile services, including mobile broadband Internet access, that are provided without interconnection to the public switched telephone network. The Commission is seeking comment as well on whether any such obligations should apply only to service providers that are also CMRS carriers or more broadly to facility-based mobile data service providers whether or not they also provide CMRS. The Commission's underlying policy goals remain the same as for mobile voice service roaming—to facilitate the provision of services in a manner that provides the greatest benefit to consumers. In particular, the Commission seeks to have service provided by new entrants in competition with established incumbents; to ensure that consumers have access to seamless coverage nationwide; and to provide incentives for both new entrants and incumbent service providers to invest and innovate by using available spectrum and constructing wireless network facilities on a widespread basis. The Commission invites parties to include any new information that may be relevant to the Commission's consideration of what action, if any, may be appropriate in this proceeding.

2. In 2007, the Commission sought comment in a *Further Notice (FNPRM)* on whether to impose data roaming obligations on CMRS carriers. The Commission recognizes the need to resolve this issue in an expeditious manner. Broadband deployment is a key priority for the Commission, and the deployment of mobile data networks will be essential to achieve the goal of making broadband connectivity available everywhere in the United States. The Commission also seeks to foster competition and the development of mobile data services with wide, seamless coverage. Wide coverage will enhance the unique social and economic benefits that a mobile service provides by enabling consumers to access information wherever they are, while competition will help to promote investment and innovation and protect consumer interests.

3. Many providers have argued that ensuring the availability of roaming arrangements for mobile broadband will

be critical to achieving these goals. The Commission also notes that roaming services have helped to promote competition and seamless nationwide coverage in the mobile telephony market. The Commission notes mobile broadband networks, particularly "fourth-generation" networks, are still at an early stage of deployment, similar to the early years of the mobile telephony market. The Commission therefore expects that the availability of data roaming services will likely play a major role in the future development of the broadband data market. Further, resolving the issue will provide regulatory certainty, which will itself help to establish an environment conducive to network deployment and investment.

4. Nevertheless, the Commission concludes that it is important to refresh and further develop the record before moving to adopt specific rules governing the availability of data roaming services. Mobile broadband is at a critical stage in its development. The mobile broadband ecosystem is rapidly evolving and providers are seeing a rapid increase in mobile broadband data use, but the advanced mobile broadband services market is still nascent. The Commission therefore seeks additional information in order to determine how best to ensure the rapid, ubiquitous and competitive development and deployment of broadband services. Given the impact the Commission's policies can have at this formative stage, the Commission needs to choose the right policies to further its goals for mobile broadband, which like its mobile services goals generally, include fostering innovation, investment and network deployment, promoting competition and the availability of seamless nationwide access, and empowering and protecting consumers.

5. Since the 2007 FNPRM, there have been numerous developments in the industry and advancements in technology that are likely to be relevant to the Commission's analysis, and which have affected at least one nationwide provider's positions in this proceeding. To help us determine the best policies for mobile broadband, the Commission wants to ensure that such information is fully incorporated into its decision making on this important issue. In addition, in light of the limited extent of the FNPRM, the Commission finds that asking a number of specific questions will ensure that its resolution of this issue is based on a more fully developed record. Although the mobile broadband market is similar to the voice market in key respects, it appears to be

different in others, and it is important that the Commission understands whether any of those differences would justify a different regulatory approach to achieve its underlying policy goals than the Commission is taking today with regard to interconnected voice. In addition, as the *FNPRM* was limited to seeking comment on the obligations of CMRS carriers that also provide non-CMRS data services, the Commission takes this opportunity to seek comment on whether to impose similar obligations on other mobile data service providers, whether they offer CMRS or not. For these reasons, the Commission seeks further comment on whether it would be in the public interest to extend roaming obligations to non-interconnected services including broadband data.

#### A. Discussion

6. The goals that informed the Commission's determinations regarding the scope of roaming obligations for interconnected voice also guide its consideration of obligations on non-interconnected data services. The Commission seeks to foster investment and innovation in the use of spectrum and the development and deployment of data network facilities and services, competition for mobile broadband business by multiple providers, and consumer benefit from the availability of advanced and innovative mobile services with seamless nationwide coverage. The Commission notes that the growth of the mobile broadband data market is at a critical early stage. Many nationwide and non-nationwide providers have obtained licenses, including AWS and 700 MHz spectrum licenses among others, that the Commission anticipates will be used to provide new and advanced data services to American consumers. Numerous commenters in this proceeding argue that the viability of data network deployments and the ability of consumers to access such services seamlessly will depend on the ability of providers to obtain data roaming arrangements.

7. The importance of the issue underscores the need for a more fully developed record to provide the foundation for fact-based, data-driven decision making, especially in light of the brevity of the *2007 FNPRM*. In the two years since the *2007 FNPRM*, the wireless broadband industry has experienced a rapid evolution, with significant economic, technological, and regulatory developments, including developments in network and device technologies, spectrum use and availability, market participants,

network deployments, and consumer demand and usage patterns. Such developments include market transactions involving significant existing CMRS providers, the Commission's auction of significant additional spectrum in the 700 MHz Band for commercial broadband use, announcements from numerous providers of new mobile broadband network deployments, increasing consumer use of smartphones, and, partly as a result, a dramatic increase in consumers' use of wireless data services. Given all these changes and developments, the Commission desires an up-to-date understanding of, among other things, the shape of the business segment, the network services and technologies that will be deployed, the importance of roaming to entry and commercial viability, the availability of roaming arrangements absent any regulatory requirement, the technical arrangements needed to support data roaming, and the capacity demands to be expected from data roaming traffic, including variability.

8. In addition, the Commission notes that the *2007 FNPRM* was limited in scope to whether the Commission should impose data roaming obligations on CMRS carriers that also provide non-CMRS data services. As the market for mobile broadband services has developed, however, the Commission now anticipates that mobile broadband services will increasingly be provided by entities that do not offer CMRS but that may nevertheless compete for mobile data service subscribers with companies that offer both mobile broadband and CMRS carriers. Therefore, the Commission is taking this opportunity to seek comment on whether automatic roaming obligations for mobile data services should apply to all providers of such services.

9. Parties should include any new information that may be relevant to determining what action the Commission should take in this proceeding. Further, parties should comment on how a roaming rule for data services, if any, should compare to the Commission's rule for voice services and explain with specificity what justifies similar or different treatment. The Commission notes that parties submitted several proposals in response to the *2007 FNPRM*.

- Some proposed that the Commission should not impose any rule.
- Others argued for a rule for data roaming that largely mirrors the voice roaming rule adopted in the *2007 Report and Order*, subject only to restrictions in

cases of technical or economic infeasibility.

- Others proposed requiring data roaming but including special conditions on data roaming comparable to those that the Commission imposed on requests for roaming for push-to-talk and SMS, including a requirement that the requesting provider offer the services on its own network for which it is requesting a roaming arrangement.

- Some suggested that data roaming obligations should only require a host carrier to provide roaming subscribers with conduit access to the requesting carrier's network, not access to the host's own proprietary information services.

- In addition, some commenters proposed specific measures to address concerns regarding the potential for data roaming to cause network capacity exhaustion.

The Commission seeks comment on these specific proposals or any other proposals for addressing data roaming obligations, and the Commission ask all parties to be specific regarding the rule that the Commission should adopt, if any, regarding data roaming. Commenters desiring confidential treatment of their submissions should request that their submission, or specific parts thereof, be withheld from public inspection pursuant to the Commission's rules.

10. *Legal Authority.* The Commission has exercised its discretion to classify some non-interconnected data services, e.g., mobile wireless broadband Internet access, as information services, thus removing them from the category of common carrier services under Title II. In the *2007 Report and Order*, the Commission found that automatic roaming is a common carrier obligation and does not extend to information services or to other wireless services that are not CMRS. Accordingly, in the *2007 FNPRM*, the Commission sought comment on whether automatic roaming obligations could be imposed on such services pursuant to our authority under Title I and/or Title III. The Commission further addresses the extent of its authority below, and the Commission seeks comment on its analysis.

11. Although the Commission determined three years ago that wireless broadband Internet access is an information service and not a CMRS service, it has not made any classification determinations regarding any service or application provided over these Internet access connections. Further, the Commission has not determined whether the provision of automatic roaming should be

considered a telecommunications service, and thus subject to Title II, even if the subscriber is using the roaming arrangement to access an information service. The Commission believes that, regardless of whether the services a subscriber would access through roaming arrangements are telecommunications services or information services, the Commission has statutory authority to require automatic roaming for them. If these services are telecommunications services, they are subject to roaming obligations pursuant to the Commission's authority under Title II and Title III. If they are information services, the Commission has the authority to promulgate roaming requirements under Title III and other provisions. The Commission seeks comment on this analysis, including the significance, if any, of the recent decision of the United States Court of Appeals for the District of Columbia Circuit in *Comcast Corporation v. FCC*.

12. The Commission turns first to its authority under Title III. Several provisions of that title provide the Commission authority to establish license conditions in the public interest. For example, Section 301 provides the Commission with authority to regulate "radio communications" and "transmission of energy by radio." Under Section 303, the Commission has the authority to establish operational obligations for licensees that further the goals and requirements of the Act if the obligations are in the "public convenience, interest, or necessity" and not inconsistent with other provisions of law. Section 303 also authorizes the Commission, subject to what the "public interest, convenience, or necessity requires," to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class." Section 307(a) likewise authorizes the issuance of licenses "if public convenience, interest, or necessity will be served thereby." Section 316 provides a similar test for new conditions on existing licenses, authorizing such modifications if "in the judgment of the Commission such action will promote the public interest, convenience, and necessity." Application of these provisions is not affected by whether the service using the spectrum is a telecommunications service or information service under the Act. Thus, in the *Wireless Broadband Internet Access Classification Order*, the Commission found that wireless broadband Internet access, although an information service, continues to be subject to obligations promulgated

pursuant to Title III. The Commission also relied on authority under Section 303(r) to impose "open platform" obligations on Upper 700 MHz C Block licensees, without regard to whether such licensees were providing telecommunications or information services. Accordingly, the Commission believes that the provisions discussed above provide authority to establish roaming obligations over both telecommunications and information services, if such obligations are found to be in the public interest and, in the case of Section 303(r), the obligations would also further the goals and requirements of the Act.

13. As discussed above, reasonable roaming obligations can serve the public interest by promoting competition, investment, and new entry while facilitating consumer access to ubiquitous service. The Commission also anticipates that promoting competition, investment, and new entry in the broadband services market and protecting consumer access to nationwide ubiquitous service, would serve several specific goals and requirements of the Act consistent with section 303(r), which gives the Commission authority to impose requirements "as may be necessary to carry out the provisions of this Act." These obligations may help to meet the requirement under Section 309(j)(3) that, "in specifying eligibility and other characteristics of \* \* \* licenses [to be issued by competitive bidding] \* \* \*, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 1 of this Act" and certain enumerated objectives. Regarding the purposes in section 1 of the Act, to the extent that they would promote competition and the availability of seamless nationwide services, automatic roaming obligations for data may further the statutory goal of making available "to all the people of the United States \* \* \* a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges \* \* \* for the purpose of promoting safety of life and property through the use of wire and radio communications." Automatic data roaming additionally may advance enumerated objectives within Section 309(j)(3), including "the development and rapid deployment of new technologies, products, and services for the benefit of the public \* \* \* without administrative or judicial delays; \* \* \*

[and] (D) efficient and intensive use of the electromagnetic spectrum \* \* \* ." To the extent that roaming requirements are found to encourage more efficient and intensive use of spectrum in rural areas, they would also support the direction of Section 303(g) to "[s]tudy new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest \* \* \* ." These obligations may also further the goal under Section 1302 of encouraging new deployment of advanced services to all Americans by promoting competition and by removing barriers to infrastructure investment, including the barriers to new entrants resulting from incumbents' "head start" advantages. Accordingly, the Commission thinks that, if roaming obligations on non-interconnected services are ultimately found to be in the public interest, the Commission has authority under the provisions of Title III discussed above, among other provisions, to establish such obligations. The Commission seeks comment on this analysis.

14. Next, the Commission seeks comment on arguments in the record that automatic roaming for non-interconnected services is itself a telecommunications service, and therefore is also subject to our authority under Title II. "Telecommunications" is defined in the Act as "the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received." "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." SouthernLINC argues that automatic roaming is simply a transmission service. It describes the function of the host provider as ensuring that data are transmitted without change between the subscriber and the subscriber's home network. Opponents argue that the provision of roaming access to information services can involve direct support of the information service by the host provider rather than simply transmission of the packets to the roaming subscriber's native network. They also argue that, even where the data are simply transmitted back to the native network, this will often require DNS lookup, which, they say, the Commission has found to be a "capability" that goes beyond mere transmission. Proponents respond that such addressing and routing functions

are not sufficient to render automatic roaming an information service, as they do not cause a “change in the form or content of the information as sent and received.” The Commission seeks comment on these arguments.

15. The Commission also seeks comment on the extent to which host providers that have implemented data roaming arrangements provide data services or applications, such as web browsing or push-to-device electronic mail, and how these applications are provided. Is a host provider’s network being used only as a conduit between the roaming subscriber and the subscriber’s home network? To the extent that a host provider performs functions other than data transmission, to what extent are these functions limited to addressing and routing functions, or other functions ancillary to achieving the transmission of the data to its destination? Do any of these functions fall within the management exception in the definition of “information service”? Do the answers to any of these questions vary depending on the specific data service (e.g., e-mail requested by subscribers of home providers, or on the specific network technology involved (e.g., 2G, 3G, or 4G)?

16. Finally, the Commission turns to its authority under Title I of the Act. Under Title I, the Commission may exercise ancillary authority over a matter when it falls within the agency’s general statutory grant of jurisdiction under Title I and the regulation is reasonably ancillary to the effective performance of the Commission’s statutorily mandated responsibilities. The Commission seeks comment on its ancillary authority to address roaming obligations for providers of non-interconnected wireless services. The Commission thinks it clear that the Commission has subject matter jurisdiction over non-interconnected wireless services and features, including wireless broadband Internet access services. As the Commission has previously found with regard to wireless broadband Internet access services, wireless non-interconnected services are covered by the Commission’s general jurisdictional grant under sections 1 and 2(a) of the Act, coupled with the definition set forth in section 3(33) (“radio communication”). Second, because the availability of automatic roaming at reasonable rates and terms can help to promote facilities-based competition and the availability of seamless nationwide services, automatic roaming obligations may be reasonably ancillary to several provisions under the Act. The Commission seeks comment on

whether these or other provisions of the Act support the exercise of ancillary authority.

17. Some commenters argue that relying on our Title I authority to impose roaming obligations on services that the Commission has classified as information services would be inconsistent with Congress’s intent that information services not be treated as common carrier services, pointing to section 153(44) of the Act. This provision provides that “a telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services.” They also argue that requiring automatic roaming obligations for information services would be inconsistent with the Commission’s prior determination that providers of information services “are exempt from mandatory Title II common carrier regulation.” The Commission seeks comment on these arguments.

18. *Importance of Data Roaming.* The Commission next seeks further comment on the importance of roaming for non-interconnected data services. In what ways will data roaming arrangements affect competitive entry and network deployment in the nascent data services market? For example, what is the effect on consumers in the absence of data roaming requirements in terms of the coverage and service they will receive? Will rural consumers, who may only have access to small, local providers, have no coverage beyond their local area?

19. The Commission also seeks comment on what impacts the establishment of data roaming arrangements may have on the terms of retail service provided to consumers, how such impacts differ from those resulting from voice roaming arrangements, and how service terms might be affected by data roaming developments in the future and a data roaming mandate in particular.

20. For those providers that have roaming arrangements with other providers for non-interconnected data services, to what extent do their data subscribers make use of such roaming arrangements, and how does the amount of their subscribers’ roaming use compare to their home network use? For host providers, how does the data roaming traffic they support compare to their own subscribers’ use, in terms of amount and revenues generated? The Commission also seeks comment on how deployment, competition, and consumer access to services will be affected in the mobile broadband market

in the absence of data roaming obligations.

21. *Investment Incentives.* The Commission seeks further comment on the impact that extending roaming requirements to wireless data services would have on the incentives of providers to invest in advanced data networks and fully use available spectrum. The record currently encompasses competing claims with regard to the impact that extending an automatic roaming obligation to non-interconnected services would have on investment. Proponents of a data roaming obligation argue that, because the availability of roaming will facilitate competitive entry, the amount of network investment will be increased. Opponents of such an obligation argue that a data roaming mandate will create disincentives for both smaller and larger providers to build out advanced networks in new areas, particularly in high cost areas.

22. The Commission first notes that these arguments are similar to the arguments presented to the Commission with regard to automatic roaming for voice services, which, as discussed above, the Commission has addressed through adoption of an automatic roaming requirement. The Commission therefore asks commenters to address specifically whether and how the investment incentives would differ for non-interconnected data services. The Commission also notes that, while many commenters made assertions regarding the impact of roaming obligations on buildout incentives, no commenters provided a methodology or hard data that would help us to judge the overall impact of a roaming obligation on investment, the use of spectrum, and buildout. Such methodology or data would be helpful. In addition, the Commission seeks comment on whether it should adopt any measures or restrictions to help preserve investment incentives. For example, should the Commission clarify that a carrier that obtains automatic roaming from another carrier does not have a right to advertise that it offers its subscribers roaming on a particular host carrier’s network absent a voluntary agreement of the host carrier? Would this help to prevent freeriding on the value of the host carrier’s brand name recognition and service quality reputation?

23. *The Provision of Roaming for Non-Interconnected Data Services.* The Commission also asks commenters to provide specific data that will help us assess the availability of roaming arrangements for various non-interconnected data services and the current ability of providers that desire

such arrangements to obtain them. The Commission seeks comment on the impact of consolidation in the CMRS market or other trends affecting market concentration on the current and future availability of roaming arrangements for non-interconnected services. For example, the Commission asks commenters to provide specific information regarding instances in which providers that have been willing to enter into roaming arrangements, whether for voice or data, are now refusing to do so. In such cases, the Commission asks commenters to specify whether the would-be host provider has refused ongoing roaming for any service, or has agreed to continue providing roaming for services previously supported but refused to extend the arrangement to new (e.g., non-interconnected data) services.

24. The Commission seeks specific information from providers that have received requests for data roaming regarding their policies and practices regarding such roaming arrangements. How many requests for data roaming they have received, how many of these requesting providers have been granted or refused roaming arrangements, and for what reasons or considerations were arrangements granted or refused? Will these policies change in the future?

25. The Commission seeks comment on the impact of developing network technology on the availability of data roaming. Are providers seeking data roaming arrangements limited to networks using the same basic air interface technology as their own, and, if so, how do the markets for roaming services compare between the different network technologies? How are roaming opportunities being affected by the handsets being developed for broadband data? For example, to what extent are multi-mode or multi-band handsets being developed that might expand a provider's potential pool of roaming partners?

26. *Capacity and Other Technical Issues.* In the *FNPRM*, the Commission sought comment on whether roaming obligations presented any issues regarding network capacity, integrity, or security, and on the effect that automatic roaming would have on the capacity of data networks and the ability of providers to offer full access to their own customers. The Commission asked whether a provider should have the right to limit access to its network by roamers and what parameters should be considered as justification for such limits. Numerous commenters addressed these issues in general terms, but provided few specifics.

27. The Commission invites commenters to refresh the record on these issues and provide specific information. The Commission seeks comment on how concerns regarding capacity or traffic management issues from data roaming traffic could be addressed. Would clarifying that a host provider's provision of data roaming service is subject to reasonable network operational needs address this issue? The Commission asks commenters to be specific regarding the clarifications, if any, that the Commissions should adopt. If a commenter asserts that addressing this problem through traffic management is not feasible, the Commission asks that the commenter provide a detailed explanation regarding the problem. Some commenters have argued, for example, that it is not possible to identify the particular roaming individuals causing a traffic congestion problem. The Commission seeks comment on the specifics of this argument, and on, assuming the argument is true, alternative traffic management approaches that are available to address network congestion issues. For instance, as suggested by some proponents of a data roaming obligation, should such a roaming obligation allow network operators to identify roaming users as a group and apply suitable network management protocols to such a group to address congestion issues? The Commission also notes that it is seeking comment below on terms and conditions established for the provision of PTT and SMS roaming that may well serve to limit technical issues.

28. The Commission also seeks specific information on the extent to which solutions have been developed to address these issues. The Commission notes, for example, that some international data roaming services have implemented models to provide traffic forecasting. Can these models help providers address the problem of uncertainty in the broadband capacity demands of roaming traffic? Have such models for data roaming been implemented domestically? Data roaming arrangements are already established in the United States that provide roaming on 2.5G data networks. The Commission seeks comment on how the capacity demands of roaming parties and the other technical issues referenced above have been addressed to achieve roaming on these networks. For example, how have providers addressed the concerns regarding traffic management and capacity exhaustion?

29. The Commission also seeks comment on what other actions might be appropriate to address spectrum

capacity needs that may arise out of data roaming or to help ensure that spectrum is utilized to the extent possible. For example, would a rule facilitating spectrum sharing arrangements between a host provider and a requesting provider be helpful or appropriate if the host provider provides data roaming services to the requesting provider? In other words, would it be helpful to obligate the requesting provider to allow the host provider to use the requesting provider's spectrum in the market in which the host provider makes data roaming available to the requesting provider?

30. To what extent have solutions been developed for anticipating and managing the broadband capacity demands of roaming traffic on networks using any 3G technology and on networks using any 4G technology? If solutions have been developed for any technology, the Commission seeks comment on the status of efforts to develop such solutions. Are there different technical, legal, commercial or policy considerations that the Commission should consider with respect to data roaming traffic on 3G and 4G networks? For instance, how do 4G technologies such as LTE impact the technical challenges to developing such roaming arrangements or otherwise affect carriers' ability to establish such arrangements? If there are differences, should the Commission treat roaming on 4G networks differently than other generations of mobile networks, including 3G networks? If so, for what period of time should the different treatment remain in place? Is facilitating automatic roaming traffic between different generations of networks, including 3G and 4G networks important and, if so, are there technical, legal, commercial or policy considerations of which the Commission should be aware? The Commission understands that a number of 3G roaming arrangements have been made between domestic and foreign carriers to support international roaming at home and abroad. The Commission seeks comment on the extent to which carriers have established data roaming arrangements with foreign carriers, whether international roaming solutions could be applied to domestic roaming.

31. *Scope of Covered Entities.* Assuming that the Commission were to impose a data roaming obligation, the Commission seeks comment on the appropriate scope and terms of the obligation (including those entities entitled to request data roaming), whether either the scope or the terms of the obligation should vary from what

the Commission has established for interconnected services, and in particular, whether the scope of entities covered by the obligations should include providers of mobile data services that do not also offer CMRS. The obligation to provide roaming for interconnected services applies only to providers that also offer CMRS, and only those that meet certain characteristics. Although mobile broadband data services may be provided by companies that are also CMRS carriers, such services may also be provided by entities that do not offer any CMRS. Therefore, the Commission seeks comment on whether the scope of covered entities should be broader than the existing scope of the automatic roaming rule. If so, how specifically should the Commission define the class of covered entities? For example, should the Commission impose the same obligations on all entities offering facility-based commercial mobile data services? Should it encompass only entities operating over licensed spectrum or include providers that rely on the use of unlicensed devices as well? Should the class of covered entities be limited to terrestrial networks, or also encompass satellite providers of mobile data services (either by satellite or ancillary terrestrial component)? The Commission seeks comment on how, specifically, the Commission should define entities covered by any automatic data roaming rule.

32. The Commission seeks comment on whether there are any subsets of non-interconnected data services to which roaming requirements should not apply. For example, should the Commission propose that any automatic roaming obligation on data service providers exclude non-facilities-based entities such as resellers? The Commission also notes that the automatic roaming obligation for interconnected services is restricted to such providers as are in actual competition for the provision of such services. Given that promoting competition would likewise be a key reason to establish roaming obligations on non-interconnected services, is there a comparable restriction the Commission should impose on the scope of such obligation to achieve the same purpose?

33. *Other Terms and Conditions.* The Commission also seeks comment on what specific terms, conditions, or restrictions the Commission should include in any rule requiring the provision of data roaming. For example, what conditions could the Commission adopt to help ensure that providers' incentives to innovate and invest are not

undermined? The Commission previously sought comment on whether the potential adverse effect on incentives might be mitigated by conditioning roaming access to non-interconnected services in the same manner as the Commission has with push-to-talk and SMS: requiring that (1) the requesting provider provide the underlying service for which roaming is requested, (2) roaming be technically feasible, and (3) any changes to the host network necessary to accommodate roaming access to the requested service be economically reasonable. The Commission again seeks comment on whether these conditions, or some variation, should be adopted.

34. Leap supports imposing the first condition above on data roaming, arguing that this would "remove any question of free-riding on the innovation of others" and "would leave ample room for product differentiation" because a provider that developed proprietary enhanced services or applications would not have to provide them to roaming subscribers. Verizon Wireless and MetroPCS raise concerns, however. Verizon Wireless argues that the proposal requires too little: under this proposal, it asserts, a provider that makes a minimal investment to support a data service on a "handful of EVDO antennas" in its home market would be able to obtain data services on a competitor's nationwide network. MetroPCS argues, however, that it requires too much: requiring the requesting provider to offer the requested data service on its own home network would be "impracticable and would foster unnecessary litigation." It further argues that there were many legitimate reasons why a provider might not offer a particular service in one or more of its home markets, including variations in the spectrum resources available to the provider.

35. The Commission continues to believe that these conditions lay a solid foundation for any roaming requirement. On the one hand, as with the Commission's automatic voice roaming requirement, a data roaming requirement is not intended to constitute a resale requirement. The Commission would decide in the case of a specific dispute whether data roaming should be provided in a particular instance, and on what terms, or whether the request is essentially a request for resale. On the other hand, requiring a provider to offer a data service on its home network would appear to be an essential element of a request for roaming coverage as opposed to resale. To the extent that the lack of a roaming arrangement may make competitive

entry in the mobile services market difficult for small providers, would it be useful to clarify that providers that do not offer data services may obtain roaming arrangements that become effective when they offer their own data services?

36. With regard to the second and third conditions, and the extent to which they require changes to the network, the Commission seeks further comment on whether these conditions will address concerns regarding the potential technical issues that may arise when implementing data roaming arrangements. The Commission seeks comment on whether the Commission should clarify that to the extent requesting providers can resolve issues of accommodation through changes to their own network, a reasonable request must include an offer to make such changes.

37. *Dispute Resolution.* The Commission seeks comment on the appropriate process for dispute resolution, and whether the Commission should provide the same process for data roaming requests as for other roaming requests. The Commission also seeks comment on whether it should adopt measures to require or encourage disputes over the reasonableness of requests for data roaming to be resolved through alternative dispute resolution procedures such as arbitration. Are there any legal considerations, limitations or concerns for the Commission to consider with respect to adoption of alternative disputes resolution procedures? If such measures are appropriate for data roaming disputes, should they be applicable to roaming disputes more generally?

## II. Procedural Matters

### A. *Initial Regulatory Flexibility Analysis*

38. As required by the Regulatory Flexibility Act of 1980 ("RFA"), the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") relating to the *Second Further Notice of Proposed Rulemaking*. The IRFA is set forth below.

#### **Initial Regulatory Flexibility Analysis**

39. As required by the Regulatory Flexibility Act of 1980, as amended (the "RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact of the policies and rules proposed in the *Second Further Notice of Proposed Rulemaking ("Second FNPRM")* on a substantial number of small entities. Written public comments are requested

on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the *Second FNPRM* provided in the item. The Commission will send a copy of the *Second FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the *Second FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

40. In the *Second FNPRM*, the Commission invites interested parties to refresh the record pertaining to the *2007 Roaming FNPRM*. Since the *2007 Roaming FNPRM*, there have been advancements in technology and developments in the industry that may have affected parties' positions on the issues raised in the *FNPRM*. Accordingly, the Commission requests that parties refresh the record in this proceeding to reflect the effects of these developments. The Commission asks parties to include any new information that may be relevant to the Commission's consideration of what action, if any, may be appropriate in this proceeding. In addition, as the previous *FNPRM* was limited to seeking comment on the obligations of CMRS carriers that also provide non-CMRS data services, the Commission takes this opportunity to seek comment on whether to impose similar obligations on other mobile data service providers, whether they offer CMRS or not. For these reasons, the Commission seeks further comment on whether it would be in the public interest to extend roaming obligations to non-interconnected services, including broadband data.

#### B. Legal Basis

41. The authority for the actions taken in this *Second FNPRM* is contained in Sections 1, 4(i), 201, 202, 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, 202, 251(a), 253, 303(r), and 332(c)(1)(B).

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

42. 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, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."

In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

43. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission proposes in this *Second FNPRM*. The Commission's extension of the automatic roaming obligation to non-interconnected services and features, including those that constitute information services, affects any CMRS carrier offering such services.

44. This IRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information that describes auction results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

45. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees,

and 19 firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of wireless firms are small.

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

47. *Cellular Licensees*. The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications." Under that SBA category, a business is small if it has 1,500 or fewer employees. For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

48. *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 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. 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. These small business size standards, 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 C Block 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. In 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

49. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 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. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

50. *Narrowband Personal Communications Service.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for

the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

51. *Specialized Mobile Radio.* The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (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. 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. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR was completed in 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 was conducted in 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. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

52. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels was conducted in 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 in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. 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.

53. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does 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. One firm has over \$15 million in revenues. In addition, the Commission does not know how many of these firms have 1500 or fewer employees. The Commission assumes, 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 approved by the SBA.

54. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3)).* For the AWS-1 bands, the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. For AWS-2 and AWS-3, although the Commission does not know for certain which entities are likely to apply for these frequencies, the Commission notes that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

55. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”). In the present context, the Commission will use the SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

56. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital

audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

57. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz Band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). This category provides that a small business is a wireless company employing no more than 1,500 persons. The Commission estimates that most such licensees are small businesses under the SBA’s small business standard.

58. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted a small business size standard for defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that 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. A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.

The SBA has approved these small size standards. Auctions of Phase II licenses commenced on and closed in 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses. In 2007, the Commission conducted a fourth auction of the 220 MHz licenses. Bidding credits were offered to small businesses. A bidder with attributed average annual gross revenues that exceeded \$3 million and did not exceed \$15 million for the preceding three years (“small business”) received a 25 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$3 million for the preceding three years received a 35 percent discount on its winning bid (“very small business”). Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007. In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

59. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, the Commission adopted size standards 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 in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 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 \$15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area (“MEA”) licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses

that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

60. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) and winning five licenses.

61. *Lower 700 MHz Band Licenses.* The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as 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 size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSA and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses. Seventeen winning bidders claimed small or very

small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

62. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. The Commission has estimated that 222 of these are small under the SBA small business size standard.

63. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$40 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million. These definitions were approved by the SBA. In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). Later in 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

64. *Aviation and Marine Radio Services.* There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees. The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, the Commission will use the SBA small business size

standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission is unable to determine how many of those licensed fall under this standard. For purposes of the Commission's evaluations in this analysis, the Commission estimates that there are up to approximately 62,969 licensees that are small businesses under the SBA standard. In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For this auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million. Further, the Commission made available Automated Maritime Telecommunications System ("AMTS") licenses in Auctions 57 and 61. Winning bidders could claim status as a very small business or a very small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years, and a small business is defined as an entity with attributed average annual gross revenues of more than \$3 million but less than \$15 million for the preceding three years. Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

65. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this

time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

66. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; were 32 small and very small businesses winning that won 119 licenses.

67. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies ("UHF") television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There is presently one licensee in this service. The Commission does not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

68. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: An

entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began and closed in 2000. The 18 bidders who claimed small business status won 849 licenses.

69. *218–219 MHz Service*. The first auction of 218–219 MHz spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Area (“MSAs”). Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after Federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, the Commission defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved of these definitions. A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, the Commission assumes for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

70. *Incumbent 24 GHz Licensees*. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons. The broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission’s understanding that Teligent and its related companies have

fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

71. *Future 24 GHz Licensees*. With respect to new applicants in the 24 GHz band, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. “Very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

72. *1670–1675 MHz Services*. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

73. *3650–3700 MHz band*. In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.*, 3650–3700 MHz). As of September 2009, more than 1,080 licenses have been granted and more than 4,870 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

74. *Internet Service Providers*. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications facilities (*e.g.*, cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.*, dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size

standard of annual receipts of \$25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, the Commission estimates that the majority of ISP firms are small entities.

75. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that the Commission’s action might affect, the Commission discusses in turn several different types of entities that might be providing Internet access service.

76. The Commission notes that, although it has no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, the Commission includes these entities in its IRFA.

77. *Satellite Telecommunications and All Other Telecommunications*. These two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules. The second has a size standard of \$25 million or less in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in these categories.

78. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of Satellite

Telecommunications firms are small entities that might be affected by the Commission's action.

79. The second category of All Other Telecommunications comprises, *inter alia*, "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems." For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by the Commission's action.

80. *Unlicensed Devices*. In this category, regulatees use devices as permitted on an unlicensed basis under the provisions of Part 15 of the Commission's Rules. The Commission does not have an accurate count of the number of regulatees utilizing this capability. Since 2007, the Census Bureau has placed wireless firms within the new, broad, economic census category Wireless Telecommunications Carriers (except Satellite). Prior to that time, such firms were within the now-superseded category of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of wireless firms are small.

81. *Part 15 Device Manufacturers*. The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, the Commission will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

82. *Telephone Apparatus Manufacturing*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways." The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: All such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

83. *Other Communications Equipment Manufacturing*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)." The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

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

84. Should the Commission decide to extend the automatic roaming requirement to non-interconnected services or features, including those that are information services, such as broadband Internet access service, or other non-CMRS services, the only reporting or recordkeeping costs incurred will be administrative costs to ensure that an entity's practices are in compliance with the automatic data roaming rule. The additional compliance requirement is that providers must provide automatic data roaming to any requesting technologically compatible carrier on reasonable and non-discriminatory terms and conditions. The Commission seeks comment on the possible burden such requirements would place on small entities. Also, the Commission seeks comment on whether a special approach toward any possible compliance burden on small entities might be appropriate. Entities, especially small businesses, are encouraged to quantify the costs and benefits of any compliance requirement that may result from this proceeding.

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

85. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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.

86. The Commission's primary objective in this proceeding is to facilitate seamless wireless communications for consumers, even when they are outside of the coverage area of their own service providers. Recognizing wireless subscribers' increasing reliance on mobile telephony services, especially the growing demand of data services by consumers, the *Second FNPRM* seeks comment on whether it would serve the public interest to extend the applicability of the automatic roaming requirements to non-interconnected services or features, including those that are information services, such as wireless broadband Internet access services, or other non-CMRS services.

87. To the extent that addressing the issues raised in the *Second FNPRM* requires modifying the applicability of the automatic roaming rules, the Commission seeks comment on the effect that such rule changes will have on small entities, on whether alternative rules should be adopted for small entities in particular, and on what effect such alternative rules would have on those entities. The Commission invites comment on ways in which the Commission can achieve its goals, but at the same time impose minimal burdens on small wireless service providers and small non-CMRS providers.

88. The item notes that, in their comments filed on the *2007 FNPRM*, several carriers argued that extending the automatic roaming requirements to non-interconnected services and features would subject networks to capacity restraints that would degrade the quality of service to the network's own customers. They also argued that there are technical issues associated with extending an automatic roaming requirement to wireless broadband Internet access services, such as, for example, different authentication methods and interoperability issues regarding methods for assigning IP addresses. The item seeks comment about whether advances in technology have helped to reduce the potential for these problems to occur or whether parties continue to have concerns with network capacity, network integrity, or network security issues that may be associated with roaming among data networks. To the extent that parties continue to have concerns about the potential for network capacity or other technical issues, the item seeks

comment on potential methods to address such issues.

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

None.

#### *B. Comment Filing Procedures*

89. 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://fjallfoss.fcc.gov/ecfs2> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs

Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

#### *C. Paperwork Reduction Act Analysis*

90. Concerning the *Order on Reconsideration*, this document does not contain an information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. 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.

91. Concerning the *Second Further Notice of Proposed Rulemaking*, this document does not contain an information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. 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.

#### *D. Congressional Review Act*

92. The Commission will send a copy of this *Order on Reconsideration and Second Further Notice of Proposed Rulemaking* in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

#### *E. Contact Persons*

93. For further information concerning this proceeding, please contact Peter Trachtenberg, Spectrum and Competition Policy Division at 202-418-7369, Christina Clearwater, Spectrum and Competition Policy Division at 202-418-1893 or Nese Guendelsberger, Spectrum and Competition Policy Division at 202-418-0634.

### III. Ordering Clauses

94. Accordingly, *It is ordered*, pursuant to the authority contained in Sections 1, 4(i), 201, 202, 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, 202, 251(a), 253, 303(r), and 332(c)(1)(B), and Section 1.429 of the Commission's rules, 47 CFR 1.429, this *Order on Reconsideration and Second Further Notice of Proposed Rulemaking is hereby adopted*.

95. *It is further ordered* Section 20.12 of the Commission's rules IS AMENDED as specified in the Final Rules, and such rule amendments shall be effective 30 days after the date of publication in the **Federal Register**.

96. *It is further ordered* the Petitions for Reconsiderations filed by Leap Wireless International, Inc., MetroPCS Communications, Inc., Spectrum Co., LLC, Sprint Nextel, and T-Mobile USA, Inc. *are hereby granted in part and denied in part* to the extent expressed herein.

97. *It is further ordered* the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 2010-9831 Filed 4-27-10; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 87

[WT Docket No. 09-42; WT Docket 10-61; FCC 10-37]

#### Aviation Service Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document considers a petition for rulemaking requesting that the Commission amend the Commission's rules for aeronautical mobility mobile stations. It also seeks comment on a proposal to permit remote monitoring of certain automated ground stations during installation and maintenance, without a licensed technician present. Finally, it proposes to codify the terms of a waiver permitting the licensing and equipment certification of devices to test aircraft data link systems.

**DATES:** Submit comments on or before June 28, 2010 and reply comments are due July 27, 2010.

**ADDRESSES:** You may submit comments, identified by WT Docket 09-42; WT Docket No. 10-61; FCC 10-37, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable

accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone 202-418-0530 or TTY: 202-418-0432.

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

**FOR FURTHER INFORMATION CONTACT:** Tim Maguire, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-2155.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Notice of Proposed Rulemaking and Order* (NPRM), WT Docket No. 10-61, WT Docket No. 09-42, and RM-11503; FCC 10-37, adopted March 11, 2010, and released March 16, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY-A257, Washington, DC 20554, or by downloading the text from the Commission's Web site at <http://www.fcc.gov/>. The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, Suite CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or calling the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

1. In this document, the Wireless Telecommunications Bureau of the Federal Communications Commission we address pending issues regarding certain Aviation Service ground station equipment. Primarily, we consider a petition for rulemaking filed by the National Telecommunications and Information Administration (NTIA), and supported by the Federal Aviation Administration (FAA), requesting that the Commission amend part 87 of the Commission's Rules to allow use of the frequency 1090 MHz by aeronautical mobility mobile stations for airport surface detection equipment (ASDE-X), commonly referred to as vehicle "squitters." It also seeks comment on a proposal by Potomac Aviation Technology Corporation (PATC) to permit remote monitoring of certain automated ground stations during installation and maintenance, without a licensed technician present. It also proposes to codify the terms of a waiver granted to Aviation Data Systems (Aust)

Pty Ltd. (ADS) to permit licensing and equipment certification of devices to test aircraft data link systems.

#### I. Procedural Matters

##### A. Ex Parte Rules-Permit-but-Disclose Proceeding

2. 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 as provided in the Commission's rules.

##### B. Comment Dates

3. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 28, 2010 and reply comments on or before July 27, 2010.

4. Commenters may file comments electronically using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. Commenters filing through the ECFS can send their comments as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Commenters may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." Commenters will receive a sample form and directions in reply. Commenters filing through the Federal eRulemaking Portal <http://www.regulations.gov>, should follow the instructions provided on the Web site for submitting comments.

5. Commenters who chose to file paper comments must file an original and four copies of each comment. 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. All filings must be sent to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

6. Commenters may send filings by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325,