

Commodity	Parts per million
Vegetable, fruiting, group 8 .....	0.60
Vegetable, tuberous and corn, subgroup 1C .....	0.01
Wheat, forage .....	0.1
Wheat, grain .....	0.1
Wheat, straw .....	0.1

<sup>1</sup>There are no U.S. registrations.

(2) Tolerances are established for residues of difenoconazole, including its metabolites and degradates, in the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole, and its metabolite, CGA-205375, 1-[2-chloro-4-(4-chlorophenoxy)phenyl]-2-[1,2,4]triazol-1-yl-ethanol, in the following commodities:

\* \* \* \* \*

(b) *Section 18 emergency exemptions.*  
[Reserved]

\* \* \* \* \*

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BILLING CODE 6560-50-S

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-8115]

#### Suspension of Community Eligibility

##### Correction

In rule document 2010-2487 beginning on page 5890 in the issue of February 5, 2010 make the following corrections:

##### **§64.6 [Corrected]**

1. On page 5891, in §64.6, in the table, under the "Current effective map date" heading, in the first entry, "Apr. 17, 2010" should read "Feb. 17, 2010".

2. On the same page, in the same section, in the same table, under the "Date certain federal assistance no longer available in SFHAs" heading, in the first entry, "Apr. 17, 2010" should read "Feb. 17, 2010".

[FR Doc. C1-2010-2487 Filed 4-27-10; 8:45 am]

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## 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:** Final rule.

**SUMMARY:** In the Order on Reconsideration, the Commission modifies the automatic roaming obligation that the Commission adopted for voice and related services in 2007 by eliminating the home roaming exclusion.

**DATES:** Effective May 28, 2010.

**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 Second Further Notice of Proposed Rulemaking (Second FNPRM) 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.fcc.gov>;

[www.bcpweb.com](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 Order on Reconsideration Section of the Order on Reconsideration and Second Further Notice of Proposed Rulemaking

##### I. Introduction

1. In this order, the Commission takes action to increase consumers' access to seamless nationwide mobile services, wherever and whenever they choose, and to promote investment, innovation, and competition in mobile wireless services. In the Order on Reconsideration, the Commission creates a framework for voice roaming that will encourage carriers of all sizes to reach reasonable commercial roaming agreements, while also encouraging these carriers to continue investing in the coverage and capacity of their networks. The Commission will adjudicate any disputes that may arise between carriers through a tailored, fact-based process. In the Second FNPRM, consistent with the recommendation of the National Broadband Plan, the Commission opens an examination of the critical issue of data roaming, by seeking comment on the rules that should apply to roaming for mobile data services such as mobile broadband service.

2. First, in the Order on Reconsideration, the Commission modifies the automatic roaming obligation that the Commission adopted for voice and related services in 2007 by eliminating the home roaming exclusion. With this decision, the Commission continues to strive to adopt policies that balance competing interests, including—promoting competition among multiple carriers; ensuring that consumers have access to seamless coverage nationwide; and providing incentives for all carriers to invest and innovate by using available

spectrum and constructing wireless network facilities on a widespread basis. Upon reconsideration, the Commission finds that an up-front, categorical exclusion of home roaming from the automatic roaming obligation does not strike the best balance in furthering these goals. As a result of the Commission's decision, home roaming will be subject to the automatic roaming requirement and, as a common carrier service, is subject to Sections 201 and 202 of the Act. The Commission will apply the same general presumption of reasonableness to requests for home roaming that the Commission applies to other requests for automatic roaming, and take into account the competing interests when addressing roaming disputes on a case-by-case basis. Specifically, the Commission establishes a general presumption that a request for automatic roaming is reasonable, in the first instance, if a requesting CMRS carrier's network is technologically compatible with the would-be host carrier's network, and the Commission will require a CMRS carrier receiving a reasonable request to provide automatic roaming on reasonable and not unreasonably discriminatory terms and conditions. The general presumption of reasonableness, however, is rebuttable, and parties may choose to bring roaming disputes to the Commission for resolution. The Commission will address such disputes on a case-by-case basis, taking into consideration the totality of the circumstances presented to determine whether requiring a roaming agreement would best further the Commission's public interest goals in such particular case.

3. Second, the Commission addresses in a Second FNPRM whether to extend roaming obligations to data services that are provided without interconnection to the public switched network—including mobile broadband services. 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 seamless and ubiquitous coverage. Ubiquitous 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. The Commission seeks to develop a more detailed and

updated record before the Commission makes a final determination regarding broadband data roaming. In 2007, the Commission sought comment on this issue in a five-paragraph *Further Notice*. In response, parties filed certain specific proposals regarding the rules, if any, that should govern roaming for mobile data services. Since that time, there have been numerous developments in the industry and advancements in technology that are likely to be relevant to the Commission's analysis, and that have affected at least one party's positions in this proceeding. To help us determine the right approach for mobile broadband roaming, the Commission wants to ensure that such developments are fully incorporated into the Commission's decision making on this important issue. Accordingly, the Commission seeks comment on the specific, concrete proposals offered in response to the 2007 *Further Notice*, as well as seeking additional proposals that parties may choose to offer in response to the Second FNPRM. In addition, the Commission expands the scope of its proceeding by seeking comment on obligations governing the provision of roaming for such data services by providers that are not CMRS carriers as well as by providers that also provide CMRS services.

## II. Order on Reconsideration

4. In this Order on Reconsideration, the Commission first eliminates the home roaming exclusion adopted in 2007. Instead, the Commission will treat requests for automatic roaming in home markets under the same framework as other requests for automatic roaming. Second, the Commission denies Sprint Nextel's request to reconsider the decision to extend automatic roaming obligations to push-to-talk. Finally, the Commission addresses the issues raised in SpectrumCo's petition for reconsideration in the Second FNPRM below.

### A. Elimination of Home Roaming Exclusion

5. In this Order on Reconsideration, the Commission strives to adopt policies that balance competing interests of promoting competition, encouraging new entry, protecting consumers, and fostering investment. As discussed below, however, these goals are sometimes in tension. To best further these goals, the Commission eliminates the home roaming exclusion and generally presumes that a request for automatic roaming will be reasonable in the first instance if the requesting carrier's network is technologically compatible. This general presumption of

reasonableness, however, is rebuttable. The Commission finds that such presumption of reasonableness will facilitate all roaming arrangements between carriers, including those for home roaming, ultimately benefiting consumers. Yet, in the event of a dispute, it also will allow the Commission to take into consideration the totality of the circumstances presented to determine whether requiring a roaming agreement would best further the Commission's public interest goals in such particular case.

6. Based on the record before us, the Commission concludes that it is in the public interest to modify its rules with respect to automatic roaming by eliminating the home roaming exclusion that the Commission previously applied to the automatic roaming requirement for voice and related services. Thus, the Commission will presume a request for automatic roaming to be reasonable, in the first instance, if the requesting carriers' network is technologically compatible, regardless of whether the request is for areas inside or outside of the requesting carrier's home market, and the Commission will require a CMRS carrier receiving a reasonable request to provide automatic roaming service to the requesting carrier on reasonable and not unreasonably-discriminatory terms and conditions. The Commission continues to support the goal of promoting facilities-based competition by providing incentives for carriers to construct wireless network facilities on the spectrum available to them. Upon reconsideration, however, the Commission concludes that the up-front categorical home roaming exclusion adopted by the *2007 Report and Order* would in many circumstances discourage, rather than encourage, the facilities-based competition it sought to promote. The Commission also remains mindful of the need in the roaming context to balance a number of competing interests, including—promoting competition (including facilities-based competition), encouraging new entry, protecting consumers, and fostering innovation and investment.

7. Although some parties have advocated that the Commission modify the home market exclusion in any of a number of ways, for example, by delaying its applicability for some period after a carrier obtains an initial spectrum license, the Commission decides that the better and simpler course is to eliminate the exclusion and address in particular cases the competing interests, including the concerns that motivated the adoption of the exclusion. Through the elimination

of the home roaming exclusion, the Commission seeks to encourage parties to negotiate roaming agreements—based on reasonable terms and conditions—that fill in gaps in their network coverage, including in areas where they hold spectrum rights. The Commission's expectation is that, with the revised rule adopted in this Order setting out an underlying obligation to provide automatic roaming, the Commission has laid the foundation to enable carriers to successfully negotiate reasonable roaming arrangements, including requests for home roaming.

8. The Commission stands ready, however, to the extent necessary, to resolve roaming disputes including whether a particular requesting carrier's request is reasonable, or whether a would-be host carrier has met its obligation to provide roaming on reasonable and not unreasonably discriminatory terms and conditions. This case-by-case analysis, through the dispute resolution process, will enable the Commission to take into consideration the particular circumstances of each dispute as they are relevant to the Commission's goals to determine whether a particular automatic roaming request, and the would-be host carrier's response, are reasonable.

9. Initially, the Commission finds that the home roaming exclusion, as adopted, failed to achieve its stated purposes in a number of respects. In adopting the home roaming exclusion, the Commission sought to promote facilities-based competition by preserving appropriate incentives for carriers to construct facilities in areas where they have spectrum holdings. The record highlights, however, that in certain circumstances the exclusion can hinder the development of such competition and create disincentives to construct. In particular, the home roaming exclusion as adopted unintentionally created confusion as to roaming rights and led some to conclude that a carrier effectively has no right to request roaming in any market where it held spectrum, and the would-be host carrier has no obligation to negotiate roaming arrangements. This would be the case even when that spectrum is newly licensed and the carrier seeking roaming thus has never had any opportunity to build any facilities in any part of the licensed spectrum. The Commission finds that the home roaming exclusion as adopted can in effect require carriers entering new markets to build out their networks extensively throughout the newly obtained license area before they can provide a competitive service to

consumers, all without the benefit of financing the construction of new networks over time with revenues from existing services and reliance on roaming to fill in gaps during build out. With "home market" defined under the exclusion on the basis of an entire license area (e.g., CMA, BTA, EA, REAG), this buildout burden can be significant, and potentially can even cover several States (e.g., if licensed on an REAG basis). In such circumstances, the Commission finds that the exclusion can delay or deter entry into a market because a carrier seeking to provide service in a new geographic area, without the ability to supplement its networks with roaming and whose initial facilities would necessarily be limited, would be required to compete with incumbents that had been developing and expanding their networks for many years. The Commission has previously recognized that this "head-start" advantage can constitute a significant hurdle to new competition.

10. In addition, although the exclusion was intended to incentivize carriers to use their spectrum holdings through additional buildout, it deprives them of roaming rights even in circumstances where their spectrum is not available or usable for reasons beyond their control. For example, a carrier's AWS-1 spectrum holding might be unavailable because of the unfinished relocation of U.S. Government incumbent users from that band. In other instances, an area may be subject to legal constraints that permit only one carrier to offer service (e.g., in certain subway systems or government lands), notwithstanding the nominal coverage of the area by a license held by another carrier.

11. Another reason for eliminating the home roaming exclusion is that it does not adequately account for the fact that building another network may be economically infeasible or unrealistic in some geographic portions of licensed service areas. The Commission finds that, in some areas of the country with very low population densities, it is simply uneconomic for several carriers to build out. Further, the Commission notes that it may be significantly more costly to build out when the carrier only has access to higher spectrum frequencies where propagation characteristics are less advantageous. Indeed, every carrier, including every nationwide carrier holding licenses that cover the entire country, relies on roaming to some extent to fill in gaps in its network coverage. In particular, the record reflects that for many CMRS carriers, there are areas within their

licensed service areas where there is insufficient demand to support construction in those areas by another carrier.

12. To address these issues, some parties propose that the Commission retain some modified form of the home roaming exclusion. These proposals vary significantly in terms of the timing and scope of implementation, and whether in particular instances there should be exceptions to the exclusion. For instance, many suggest that implementation of the home roaming exclusion be delayed for some period following the effective date of the order. Some advocate that the exclusion take effect in a particular location only after a period of time following the availability of spectrum to a new licensee—which may occur with the initial issuance of a license by the Commission or only after the license is no longer encumbered for reasons beyond the requesting carrier's control. The particular suggestions for the limited period of time range widely, between one year and seven years. Other suggestions include the possibility that the exclusion not apply for an additional time period if a requesting carrier meets Commission-specified build-out benchmarks on a population or geographic coverage basis within specific time periods. As another alternative, some suggest that, after an initial transition period during which home roaming would be provided, the home roaming exclusion would apply where the would-be host carrier affirmatively establishes that the requesting carrier has failed to make progress in building out.

13. The Commission concludes that the better, simpler approach is to eliminate the home roaming exclusion. The Commission finds the reasonableness of a roaming request in many instances will likely depend on the individual circumstances of a particular request. For instance, the Commission recognizes the difficulties in determining accurately whether a carrier has avoided facilities-based entry in a high cost area because it is prohibitively difficult or merely less profitable than urban areas. This difficulty, however, and the intensively fact-based nature of the issue, weighs in favor of a case-by-case, fact-driven approach that the Commission is adopting for resolving disputes over roaming arrangements. The Commission discusses below the various factors that will guide the resolution of any disputes brought before it.

14. The Commission also notes that, in the *2007 Report and Order*, the Commission continued to encourage all

CMRS carriers to negotiate reasonable roaming agreements. It specifically contemplated that, even with the home roaming exclusion, CMRS carriers would continue voluntarily to negotiate automatic roaming agreements that included home roaming. The record supports the conclusion that the Commission's home roaming exclusion is hampering CMRS carriers' abilities to negotiate automatic roaming agreements for home roaming or obtain renewal of existing automatic roaming agreements that included home roaming, and will likely have a growing impact in the future. The Commission finds that the home roaming exclusion unintentionally changed the status quo with regard to carriers' previously existing practices in negotiating roaming agreements and may have disrupted settled expectations of competitive carriers on which they formed long-term business models.

15. In particular, the Commission rejects the arguments of AT&T and Verizon Wireless that carriers cannot claim any harm in the home roaming exclusion because it merely maintains a status quo under which they have never had any rights to home roaming. Although, prior to the *2007 Report and Order*, the Commission had not expressly provided that there was a home roaming obligation under Sections 201 and 202, nor adopted any rules requiring the provision of such services, it had stated on several occasions that carriers that were unreasonably denied automatic roaming could seek relief under Section 201. For example, when addressing in its 2000 Notice of Proposed Rulemaking whether to adopt an automatic roaming requirement, the Commission began by affirming that "roaming is a common carrier service \* \* \* and thus \* \* \* the provision of roaming is subject to the requirements of Section 201(b), 202(a), and 332(c)(1)(B) of the Communications Act." It then sought comment on, among other things, whether "the avenues of complaint and redress afforded by Section 208 provide sufficient and appropriate means of ensuring the development of automatic roaming services in a competitive CMRS market." Similarly, in the *2005 Roaming Reexamination NPRM*, the Commission began a further consideration of whether to adopt an explicit automatic roaming requirement by stating that "complaints and enforcement actions involving unjust and unreasonable charges, practices, or discriminatory conduct by CMRS carriers in the provision of roaming services are covered by the complaint process set forth in Title II of

the Act." During this period, the Commission also indicated in transactions-related orders that automatic roaming was subject to the statutory obligations under Section 208.

16. In referring to existing carrier obligations under Section 201 and 202, the Commission generally did not distinguish between home roaming and automatic roaming. Further, during this period, automatic roaming arrangements were being negotiated among carriers, with no specific indication that home roaming agreements were particularly problematic. Thus, the Commission finds that the clarifications in the *2007 Report and Order* did alter the legal status quo against which automatic roaming arrangements were being negotiated, and that the adoption of an automatic roaming obligation with a home roaming exclusion appears to have significantly reduced the incentive to make home roaming available, and will lead to a reduction in the availability of home roaming arrangements over time. Indeed, as discussed earlier, the record supports the conclusion that the Commission's home roaming exclusion is hampering CMRS carriers' abilities to negotiate automatic roaming agreements that include home roaming.

17. Other factors may be contributing to a declining availability of roaming arrangements in home markets, which further supports the Commission's action here. For one, since the Commission's adoption of the home roaming exclusion, there have been a number of significant mergers consummated in the last two and a half years. MetroPCS states that, with the consolidation in the industry, the number of roaming partners is diminishing, making it less likely that leaving negotiations involving home roaming strictly to the market without any underlying regulatory obligations, will result in fewer such roaming agreements. Additionally, T-Mobile provides an expert report with an economic analysis of roaming that recommends the elimination of the home roaming exclusion in light of the significant changes in the wireless industry since the *2007 Report and Order* was released. AT&T points out that, with respect to each wireless transaction approved since 2007, the Commission has concluded that the transaction, with or without conditions, served the public interest and argues that the transactions have yielded significant consumer benefits in that AT&T brings to the customers of the acquired carrier access to the same wireless services and products, such as next-generation networks and

innovative voice and data plans, that are available to customers in the most densely populated areas. While the Commission has approved these transactions, with conditions, as not resulting in any transaction-specific competitive harm, those orders have recognized the legitimacy of addressing roaming issues in a rulemaking context and the Commission finds that broad industry trends should be considered in evaluating the availability of reasonable home roaming arrangements. The Commission finds that, in some areas, the consolidation in the wireless industry may have reduced the number of available roaming partners for some of the smaller, regional and rural carriers. This trend thus may have contributed to reductions in the availability of voluntary and reasonable roaming arrangements, including arrangements for home roaming. Regardless of the factors behind the apparent decline in the availability of such roaming arrangements, the Commission finds further grounds to reconsider an upfront, categorical home roaming exclusion that can serve as a bar to negotiation of reasonable arrangements.

18. The Commission rejects contentions by AT&T and Verizon Wireless that the Commission needs to retain the home roaming exclusion so as not to undermine facilities-based service or discourage competition based on coverage and service quality. According to AT&T, the home roaming exclusion has positive effects on competition and there is no justification for allowing a company to take advantage of its competitor's investment in network infrastructure and superior in-market coverage. Verizon Wireless similarly argues the home roaming exclusion should be retained because it encourages build-out in high cost areas and serves the public interest by allowing carriers that have made the investment to construct facilities in high cost areas to differentiate themselves on the basis of superior coverage. Verizon Wireless also states that repealing the home roaming exclusion would undermine the pro-competitive benefits that flow from carriers differentiating themselves on the basis of superior coverage in the home market, and would also undermine the requesting carriers' incentive to build network facilities to improve coverage in their licensed areas.

19. The Commission agrees that there are pro-competitive benefits that flow from carriers differentiating themselves on the basis of coverage in their licensed service areas, including in rural and remote areas. However, the Commission

is not persuaded that replacing the current categorical home roaming exclusion with a case-by-case assessment of reasonableness, based on the reasonableness of a particular roaming request, will undermine these pro-competitive benefits. The Commission seeks here to balance various factors, which, in addition to fostering investment, include promoting competition, encouraging new entrants, and protecting the interests of consumers. The Commission also considers that outcomes can have both positive and negative effects on the build-out incentives of both requesting and host carriers, and these considerations must also be weighed. In balancing these effects and factors, the Commission finds that adopting an approach that includes a general presumption of reasonableness with respect to automatic roaming, combined with a case-by-case determination of reasonableness in the event of a dispute, better preserves incentives to enter and incentives to invest overall, and at the same time protects consumers by facilitating their access to ubiquitous service.

20. AT&T argues that, if the first carrier providing coverage in a given area were required to provide automatic home roaming service to its competitors' customers, there would be no reason for competitors to build out their own networks in that area. The Commission disagrees. Carriers deploying next generation networks will still have incentives to build out to ensure that their subscribers receive all of the benefits of the carriers' own advanced networks. The Commission finds that, as a practical matter, the relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to "piggy back" on another carrier's network. Further, the Commission emphasizes that host carriers have flexibility, subject to a standard of reasonableness, to establish the structure and the level of roaming rates, and that, as described below, the fact that a requesting carrier holds spectrum, or is offering service on its own facilities, in an area are among the factors the Commission may consider in addressing disputes. Accordingly, the impact of a roaming obligation on build-out incentives does not warrant a general exclusion, but should be considered as a factor on a case-by-case basis in the event of a dispute.

21. The Commission rejects as well AT&T's argument that there is no evidence to suggest that home roaming is necessary to eliminate the "head start" advantage of larger carriers. As

discussed above, the Commission finds that the record amply supports a finding that in the absence of roaming arrangements, such an advantage will deter investment and constitute a significant hurdle to competition.

22. AT&T also argues that no regulatory intervention is necessary because there is competition in the retail market and no harm to consumers. The Commission notes that in the *2007 Report and Order*, the Commission already rejected this argument when it found that automatic roaming is a common carrier service and adopted the automatic roaming rule, concluding that "[g]iven the current CMRS market situation and wireless customer expectations, [i]t is in the public interest to facilitate reasonable roaming requests by carriers on behalf of wireless customers." As noted in the *2007 Report and Order*, consumers increasingly rely on mobile services, they reasonably expect to continue their wireless communications wherever they are, and automatic roaming benefits them by promoting seamless CMRS service around the country. In this order, the Commission merely places requests for home roaming under the same framework as other requests for roaming services. As discussed above, the Commission's decision here will protect consumers, promote competition, ensure that consumers have access to seamless coverage nationwide, and provide incentives for all carriers to invest and innovate by using available spectrum and constructing wireless network facilities on a widespread basis.

23. The Commission also disagrees with AT&T's contention that elimination of the home roaming exclusion would create *de facto* mandatory resale obligations. The automatic roaming obligation imposed in the *2007 Roaming Order* under Sections 201 and 202, and that the Commission expands here with the elimination of the home roaming exclusion, is not intended to resurrect CMRS resale obligations. The Commission's mandatory resale rule was sunset in 2002, and, as the Commission previously stated, the automatic roaming obligations cannot be used as a backdoor way to create *de facto* mandatory resale or virtual reseller networks. The Commission finds that its actions herein in eliminating the home roaming exclusion will not effectively change the Commission's policy on CMRS resale obligations. While resale obligations are intended to offer carriers the opportunity to market a competitive retail service without facilities development, such a resale product would not serve the Commission's goals

of promoting facilities-based competition, the development of spectrum resources, and the availability of ubiquitous coverage.

24. *Addressing disputes.* To the extent there is a disagreement between CMRS carriers regarding automatic roaming requests, including requests for home roaming rights, carriers may seek a determination from the Commission as to whether the parties have met their obligations with regard to automatic roaming. The Commission reaffirms here its intent to address such roaming disputes expeditiously. Whether or not the appropriate procedural vehicle is a complaint under Section 208 of the Act or a petition for declaratory ruling under Section 1.2 of the Commission's rules may vary depending on the circumstances of each case. If a dispute arises regarding automatic roaming obligations, parties are encouraged to contact Commission staff for procedural guidance and for negotiations using the Commission's informal dispute resolution processes. Below, the Commission provides some clarification as to how such disputes will be addressed.

25. The Commission first emphasizes that CMRS carriers' statutory obligations regarding automatic roaming are not framed in absolute terms. Under Sections 332(c)(1)(B), 201 and 202, the request to obtain automatic roaming must be "reasonable." Furthermore, Section 201(b) requires carriers' practices relating to their provision of automatic roaming to be "reasonable" and Section 202(a) prohibits "unjust and unreasonable" discrimination. Thus, in each instance, the statutory obligation is qualified by a "reasonableness" standard. The Commission has broad discretion in interpreting these statutory obligations and the application of the "reasonableness" standard to a particular context. As discussed below, in resolving roaming disputes, the Commission will assess whether a request is reasonable and whether the host carrier's response to the request is reasonable and not unreasonably discriminatory based on the totality of the circumstances of a particular case.

26. In resolving disputes, the Commission will presume, in the first instance, that a request for automatic roaming of covered services by a technologically compatible carrier is reasonable under Sections 332(c), 201 and 202, regardless of whether the request includes areas where the requesting carrier holds spectrum rights. When a presumptively reasonable automatic roaming request is made, a would-be host CMRS carrier has a duty to respond promptly to the request and

avoid actions that unduly delay or stonewall the course of negotiations regarding that request. For example, following receipt of a presumptively reasonable automatic roaming request, evidence of a would-be host carrier's refusal to respond at all or a persistent pattern of stonewalling behavior will likely support a finding of a breach of the would-be host carrier's automatic roaming obligations.

27. As discussed above, the Commission seeks to encourage parties to negotiate roaming agreements based on reasonable terms and conditions. In case of a dispute, the Commission's consideration begins with the presumption that a request by a technologically compatible carrier for automatic roaming is reasonable. This presumption of reasonableness, however, is rebuttable, and host carriers may seek to demonstrate, under their particular circumstances, that the general presumption of reasonableness with respect to the provision of automatic roaming requests meeting the conditions specified above should not apply. Below, the Commission provides additional guidance on factors the Commission may consider when resolving such roaming disputes that are brought before it—specifically in determining whether a request is reasonable and whether the host carrier's response to the request is reasonable and not unreasonably discriminatory. Each case will be decided based on the totality of the circumstances, such that no particular factor will be dispositive. With that in mind, the Commission clarifies that it may consider the following factors, as well as others, when considering whether requiring roaming in the circumstances at issue would best further the Commission's public interest goals:

- The terms and conditions of the proposed roaming agreement;
- The level of competitive harm in a given market and the benefits to consumers;
- The extent and nature of the requesting carrier's build-out in the areas where it holds spectrum rights and has requested automatic roaming, the length of time the requesting carrier has held such spectrum rights, whether such spectrum is encumbered, and if not, how long it has been unencumbered;
- Significant economic factors, such as whether building another network in the geographic area may be economically infeasible or unrealistic, and the impact of any "head-start" advantages;

- Whether the requesting carrier is seeking roaming for an area where it is already providing facilities-based service;
- The impact of granting the request on the incentives for either carrier to invest in new facilities and coverage, new services, and service quality;
- Whether the carriers involved have had previous roaming arrangements with similar terms;
- Whether alternative roaming partners are available;
- Events or circumstances beyond either carrier's control that impact either the provision of automatic roaming or the need for roaming in the proposed area(s) of coverage;
- The propagation characteristics of the spectrum licensed to the requesting and would-be host carriers, including circumstances where the requesting carrier's spectrum rights in an area are limited to higher spectrum frequencies where propagation characteristics are less advantageous than a host carrier's licensed spectrum;
- Other special or extenuating circumstances.

28. The Commission notes again that these factors are not exclusive or exhaustive. Carriers may argue that the Commission should consider other relevant factors in determining whether a request is reasonable or a host carrier's position is unreasonable or unreasonably discriminatory under Sections 201 and 202 of the Act. In addition, to better promote reasonable negotiations on both sides of a request, the Commission clarifies that, in determining whether a carrier will be found liable for a violation of its obligations under Sections 201 and 202, the Commission will also consider whether its position had a reasonable basis, taking into account all relevant precedents and decisions by the Commission.

#### *B. Push-to-Talk*

29. Based on the record, the Commission finds Sprint Nextel has failed to demonstrate sufficient grounds for revisiting the determination that carriers must provide roaming for push-to-talk services upon reasonable request. Accordingly, the Commission denies Sprint Nextel's Petition for Reconsideration.

30. Having reviewed the arguments of all parties and the relevant record evidence, the Commission finds Sprint Nextel has failed to demonstrate sufficient grounds for revisiting the determination that carriers must provide push-to-talk roaming upon reasonable request.

31. First, the Commission disagrees with Sprint-Nextel that the Commission's findings on push-to-talk service were unsupported by record evidence. Contrary to Sprint-Nextel's assertion, the record provides substantial evidence for the Commission's finding that push-to-talk is provided both as an interconnected service or feature and as a non-interconnected service or feature, depending on the technology and network configuration that is chosen by the carrier. Consumers do not generally differentiate between push-to-talk that is interconnected and push-to-talk that is not interconnected, but form their expectations of seamless connectivity based on the way that push-to-talk service is provided on their cell phones and in their calling plans. As the Commission noted in the *2007 Report and Order*, the Commission finds it in the public interest to protect and promote consumer expectations of seamless connectivity by extending automatic roaming obligations to push-to-talk. In that regard, the conclusion that consumers generally regard push-to-talk services as a feature on their handset, provided along with other CMRS services, is supported by the *Eleventh Competition Report*, as well as by other publicly available information about the state of the push-to-talk market and by commenters. The Commission likewise finds substantial evidence that push-to-talk is typically not offered as a stand-alone voice service, but is offered solely in conjunction with the activation of basic voice service that is an interconnected service. The Commission finds it likely consumers consider push-to-talk as a feature on their handsets that provides a different type of voice functionality that complements their basic voice service. Sprint Nextel has not provided any factual evidence to demonstrate that this analysis is incorrect.

32. The Commission also is not persuaded by Sprint Nextel's other arguments. Sprint Nextel disputes whether push-to-talk is in fact an "adjunct" to basic voice service as that term is used in the Commission's regulatory scheme. The analysis in the *2007 Report and Order*, however, did not reference the particular regulatory construct cited by Sprint Nextel. Rather, as discussed above, the Commission used the term in a more general sense to describe the expectations of consumers based on their perception of push-to-talk services as provided in the marketplace. As the Commission stated: "[w]e are also aware that consumers consider push-to-talk and SMS as

features that are typically offered as adjuncts to basic voice services, and expect the same seamless connectivity with respect to these features and capabilities as they travel outside their home network service areas (emphasis added).” The Commission notes that “safeguard[ing] wireless consumers’ reasonable expectations of receiving seamless nationwide commercial mobile telephony services through roaming” is one of the goals that the Commission considered in establishing the parameters of the automatic roaming obligation. Further, considering these factors taken together with the significant market presence of interconnected push-to-talk, which provides the same service functionality and will indisputably be subject to automatic roaming requirements, the Commission again finds it in the public interest that CMRS providers of push-to-talk voice services should be subject to the same automatic roaming obligations regardless of the technology or network configuration through which such services are provided.

33. Sprint Nextel’s argument that this decision improperly adjudicates its dispute with SouthernLINC is also without merit. Specifically, the Commission declared its intention to proceed through rulemaking in two prior merger proceedings in which Sprint Nextel was a party. Moreover, push-to-talk is not a service unique to Sprint Nextel. Other nationwide carriers are providing push-to-talk, and all push-to-talk features and capabilities are covered in the *2007 Report and Order* regardless of whether the underlying network is iDEN, CDMA, or GSM. In determining whether extending roaming obligations to push-to-talk would serve the public interest, the Commission examined, among other things, the record evidence concerning Sprint Nextel’s actions regarding push-to-talk roaming. SouthernLINC and other small iDEN carriers presented evidence that certain customers were unable to obtain seamless push-to-talk connectivity when outside their home market areas in the absence of a roaming agreement with Sprint Nextel. That evidence is a relevant part of the overall record respecting “current market conditions” and “developments in technology” the Commission considered in making its determination whether push-to-talk services should be included in the roaming obligations imposed by the order.

34. Finally, the Commission disagrees that extending automatic roaming obligations to push-to-talk will eliminate push-to-talk geographic coverage as a market differentiator. As

discussed above, the scope of a requesting carrier’s buildout is one factor the Commission will consider in adjudicating disputes regarding the provision of automatic roaming. In summary, Sprint Nextel has presented no persuasive legal argument or factual evidence to demonstrate that the Commission erred in concluding that the imposition of a push-to-talk roaming obligation serves the public interest. The Commission therefore denies Sprint Nextel’s petition for reconsideration with respect to push-to-talk roaming.

### III. Procedural Matters

#### A. Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980 (“RFA”), the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to the *Order on Reconsideration*. The FRFA is set forth below.

#### Final Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Memorandum Opinion & Order and Notice of Proposed Rulemaking* in WT Docket No. 05–265. The Commission sought written public comment on the proposals in that Order and Notice, including comment on the IRFA. A Final Regulatory Flexibility Analysis was adopted in conjunction with the Commission’s *Report and Order and Further Notice of Proposed Rulemaking* in WT Docket No. 05–265. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### A. Need for, and Objectives of, the Order on Reconsideration

37. In the *2007 Report and Order*, the Commission clarified that automatic roaming is a common carrier obligation for commercial mobile radio service (CMRS carriers), subject to Sections 201 and 202 of the Communications Act, and required CMRS carriers to provide automatic roaming services to other carriers upon reasonable request on a just, reasonable, and non-discriminatory basis. In particular, the Commission determined that, when a reasonable request for automatic roaming is made by a technologically compatible CMRS carrier (requesting carrier), a host CMRS carrier has the obligation under Sections 332(c)(1)(B) and 201(a) to provide automatic roaming on a just, reasonable, and non-discriminatory basis to the requesting carrier outside of the requesting carrier’s home market. The Commission defined the home market

as any geographic location where the requesting carrier has a wireless license or spectrum usage rights that could be used to provide CMRS. In excluding home roaming, the Commission found that imposing an automatic roaming obligation in home markets where the requesting carrier already has the spectrum to compete directly with the would-be host carrier would not serve the public interest. In reaching this decision, the Commission found “requiring home roaming could harm facilities-based competition and negatively affect build-out in these markets, thus adversely impacting network quality, reliability and coverage.” The Commission also, however, recognized the importance of home roaming and encouraged all CMRS carriers to negotiate automatic roaming in home markets, stating that its decision should not be construed as prohibiting a requesting carrier from seeking to negotiate home roaming agreements. In addition, the Commission found that the scope of the automatic roaming obligation under sections 201 and 202 includes only services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables providers to reuse frequencies and accomplish seamless hand-offs of subscriber calls. The Commission also found, based on several factors, that it would serve the public interest to extend the scope of the automatic roaming obligation to push-to-talk and SMS, but declined to adopt a rule extending the automatic roaming obligation to include non-interconnected services, such as wireless broadband Internet access services.

38. In response to the *2007 Report and Order*, the Commission received five petitions for reconsideration, four oppositions to the petitions for reconsideration, five replies to the oppositions, and three comments in support of the petitions for reconsideration. In the petitions for reconsideration, the petitioners request that the Commission reconsider the determination relating to the home roaming exclusion. Specifically, petitioners ask the Commission to reconsider its ruling that host carriers are not required to provide automatic roaming in any areas where the requesting carrier holds a wireless license or leases spectrum, and to eliminate the home roaming exclusion. All five petitioners challenge the Commission’s policy rationale for



adopting the home roaming exclusion. The petitioners are primarily concerned with obtaining automatic roaming services for their home markets from a would-be host CMRS carrier, and are also concerned that newly acquired AWS-1 and 700 MHz spectrum may be encumbered, and therefore not capable of being used. With regard to AWS-1 and 700 MHz spectrum, petitioners argue that it should not be considered part of their "home market" for purposes of application of the home roaming exclusion. Sprint Nextel also requests that the Commission reconsider the decision to extend automatic roaming obligations to push-to-talk (PTT). In addition, SpectrumCo asks the Commission to reconsider its decision to limit the automatic roaming obligation only to services that use the public switched network.

39. In the *Order on Reconsideration*, the Commission eliminates the home roaming exclusion adopted in 2007. Instead, the Commission will treat requests for automatic roaming in home markets under the same framework as other requests for automatic roaming. Thus, the Commission will generally presume that such a request is reasonable in the first instance if the requesting CMRS carrier's network is technologically compatible with the would-be host carrier's network, and the Commission will require that a CMRS carrier receiving a reasonable request to provide automatic roaming to the requesting carrier on reasonable and not unreasonably discriminatory terms and conditions. This presumption of reasonableness is rebuttable, and parties may choose to bring roaming disputes to the Commission for resolution. With respect to Sprint Nextel's request that the Commission reconsider its decision to extend automatic roaming obligations to push-to-talk, the Commission denies the request and finds that Sprint Nextel has failed to demonstrate sufficient grounds for revisiting the determination. The Commission addresses the issues raised in SpectrumCo's petition for reconsideration in the *Second FNPRM*.

#### *B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA or FRFA*

40. The Commission received no filings directly in response to the previous IRFA or FRFA.

#### *C. Description and Estimate of the Number of Small Entities To Which the Order on Reconsideration Will Apply*

41. The RFA directs the Commission to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by

the rules adopted herein. 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).

42. The Commission has included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

43. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

44. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the new economic census category of "Wireless Telecommunications Carriers

(except satellite)." Under this new category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The data the Commission presents on the number of small entities is based on the information gathered in conjunction with the prior two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications"—both of the small business size standards in effect prior to the adoption of the new size standard by the SBA in 2008. Since no new data has been acquired since the adoption of the new size standard, the Commission provides the only data it has which is based on data collected before the new size standard went into effect. 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.

45. *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.

46. *700 MHz Guard Bands Licenses.* In the *700 MHz Guard Bands 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.

47. *700 MHz Band Commercial Licenses.* There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698–757, 758–763, 776–787, and 788–793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) “Small business,” which is defined as an entity that has attributed average annual gross revenues that do not exceed \$40 million during the preceding three years; and (2) “very small business,” which is defined as an entity with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years. In Block C of the Lower 700 MHz Band (710–716 MHz and 740–746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: An “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.

48. An auction of 740 licenses for Blocks C (710–716 MHz and 740–746 MHz) and D (716–722 MHz) of the Lower 700 MHz Band 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: Five EAG licenses and 251 CMA licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

49. The auction for the remaining 62 megahertz of commercial spectrum began on January 24, 2008. A total of 214 applicants were found to be qualified bidders, of which 38 applicants claimed status as small businesses and 81 applicants claimed status as very small businesses. The auction concluded on March 18, 2008 with 101 bidders winning 1090 licenses. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. The provisionally winning bid for the D Block license, however, did not meet the applicable reserve price and, thus, did not become a winning bid.

50. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands. Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding \$40 million as a “small business,” and an entity with average annual gross revenues for the three preceding years not exceeding \$15 million as a “very small business.” SBA has approved these small business size standards for the aforementioned bands. Correspondingly, the Commission adopted a bidding credit of 15 percent for “small businesses” and a bidding credit of 25 percent for “very small businesses.” This bidding credit structure was found to have been consistent with the Commission’s schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission’s rules. The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed

entities. The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded.

51. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (“AWS–1”). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

52. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the new economic census category of “Wireless Telecommunications Carriers (except satellite).” Under this new category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The data the Commission presents on the number of small entities is based on the information gathered in conjunction with the prior economic census category of “Cellular and Other Wireless Telecommunications”—the small business size standard in effect prior to the adoption of the new size standard by the SBA in 2008. Since no new data has been acquired after the adoption of the new size standard, the Commission provides the only data it has available which is based on data collected before the new size standard went into effect.

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.

53. *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 Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F 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.

54. *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.

55. *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 auction 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.

56. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began 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 business.

57. 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.

58. *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.

59. *Mobile Satellite Service Carriers.* Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have \$13.5 million or less in annual revenues. Currently, the Commission's records show that there are 31 entities authorized to provide voice and data MSS in the United States. The Commission does not have sufficient information to determine which, if any, of these parties are small entities. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including

construction of satellite space stations and rocket launch, associated with satellite systems and services.

60. *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.

61. *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.

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 the 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 dollars. 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 dollars. 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; there 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 "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

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 (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Area ("MSAs"). Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business 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 less 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 exceeding \$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. *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.

75. 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.

76. 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.

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

77. There are no proposed reporting or recordkeeping requirements for small entities. As noted, the Commission is proposing to require a CMRS carrier receiving a reasonable request to provide automatic roaming on reasonable and not unreasonably discriminatory terms and conditions. The general presumption of reasonableness, however, is rebuttable, and parties may choose to bring roaming disputes to the Commission for resolution.

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

78. 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 and reporting requirements under the rule for such 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 such small entities.”

79. In the previous *2007 Report and Order*, the Commission clarified that automatic roaming is a common carrier obligation for CMRS carriers, requiring them to provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act. In adopting this requirement and promulgating the related rule, the Commission determined that, when a reasonable request is made by a technologically compatible CMRS carrier, a host CMRS carrier is obligated under Sections 332(c)(1)(B) and 201(a) to provide automatic roaming on a just, reasonable, and non-discriminatory basis to the requesting carrier outside of the requesting carrier’s home market.

80. As noted, in the *Order on Reconsideration*, the Commission eliminates the home roaming exclusion adopted in 2007. Instead, the Commission will treat requests for automatic roaming in home markets under the same framework as other

requests for automatic roaming. Thus, the Commission will generally presume that such a request is reasonable in the first instance if the requesting CMRS carrier’s network is technologically compatible with the would-be host carrier’s network, and the Commission will require that a CMRS carrier receiving a reasonable request to provide automatic roaming to the requesting carrier on reasonable and not unreasonably discriminatory terms and conditions. Finally, this presumption of reasonableness is rebuttable, and parties may choose to bring roaming disputes to the Commission for resolution.

81. Every carrier, including small and nationwide carriers, relies on roaming to fill-in gaps in its network coverage. The Commission finds that the modifications above strike an appropriate balance between the interests of existing carriers with robust networks and those of other carriers, including new market entrants and smaller, regional or rural carriers by offering both groups the flexibility and sufficient time to plan their service roll out in their license areas. With this decision, the Commission continues to strive to adopt policies that balance competing interests, including—promoting competition among multiple carriers, ensuring that consumers have access to seamless coverage nationwide, and providing incentives for all carriers to invest and innovate by using available spectrum and constructing wireless network facilities on a widespread basis.

82. With respect to Sprint Nextel’s petition for reconsideration, the Commission reaffirms the decision to extend automatic roaming obligations to push-to-talk (PTT) services, and notes the Commission has previously addressed the steps taken to minimize the impact on small businesses in this context in the FRFA adopted in conjunction with the *2007 Report and Order*.

83. *Report to Congress:* The Commission will send a copy of the *Order on Reconsideration*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order on Reconsideration*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order on Reconsideration* and this FRFA (or summaries thereof) will also be published in the **Federal Register**.

*B. Paperwork Reduction Act Analysis*

84. 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.

85. Concerning the *Second FNPRM*, 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.

#### C. Congressional Review Act

86. 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.

#### D. Contact Persons

87. 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.

#### IV. Ordering Clauses

88. 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.

89. *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 May 28, 2010.

90. *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.

91. *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.

#### List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, and Radio.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

#### Final Rules

■ For the reason discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

#### PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. **Authority:** 47 U.S.C. 154, 160, 201, 251–254, 303, and 332 unless otherwise noted.

■ 2. In § 20.3 remove the definitions “Home Carrier” and “Home Market” and revise the definition of “Host Carrier” to read as follows:

##### § 20.3 Definitions.

\* \* \* \* \*

*Host Carrier.* For automatic roaming, the host carrier is a facilities-based CMRS carrier on whose system another carrier’s subscriber roams. A facilities-based CMRS carrier may, on behalf of its subscribers, request automatic roaming service from a host carrier.

\* \* \* \* \*

■ 3. In § 20.12 revise paragraph (d) to read as follows:

##### § 20.12 Resale and roaming.

\* \* \* \* \*

(d) *Automatic Roaming.* Upon a reasonable request, it shall be the duty of each host carrier subject to paragraph (a)(2) of this section to provide automatic roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions, pursuant to Sections 201 and 202 of the Communications Act, 47 U.S.C. 201 and 202. The Commission shall presume that a request by a technologically compatible CMRS carrier for automatic roaming is reasonable pursuant to Sections 201 and 202 of the Communications Act, 47 U.S.C. 201 and 202. This presumption may be rebutted on a case by case basis.

The Commission will resolve automatic roaming disputes on a case-by-case basis, taking into consideration the totality of the circumstances presented in each case.

[FR Doc. 2010–9832 Filed 4–27–10; 8:45 am]

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 223 and 224

[Docket No. 080229341–0108–03]

RIN 0648–XF89

#### Endangered and Threatened Wildlife and Plants: Threatened Status for the Puget Sound/Georgia Basin Distinct Population Segments of Yelloweye and Canary Rockfish and Endangered Status for the Puget Sound/Georgia Basin Distinct Population Segment of Bocaccio Rockfish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** We, the NMFS, issue a final determination to list the Puget Sound/Georgia Basin Distinct Population Segments (DPSs) of yelloweye rockfish (*Sebastes ruberrimus*) and canary rockfish (*Sebastes pinniger*) as threatened, and bocaccio rockfish (*Sebastes paucispinis*) as endangered under the Endangered Species Act (ESA). We intend to propose protective regulations for yelloweye and canary rockfish under ESA section 4(d) and critical habitat for all three species in separate rulemakings, and will solicit public comments for these rulemakings separately.

**DATES:** This final rule is effective on July 27, 2010.

**ADDRESSES:** NMFS, Protected Resources Division, 7600 Sandpoint Way, NE., Building #1, Seattle, WA 98115.

**FOR FURTHER INFORMATION CONTACT:** Dan Tonnes at the address above or at (206) 526–4643, or Dwayne Meadows, Office of Protected Resources, Silver Spring, MD (301) 713–1401. The final rule, references and other materials relating to this determination can be found on our Web site at <http://www.nwr.noaa.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 9, 2007, we received a petition from Mr. Sam Wright of