

spend 6 months or more of the calendar year.

(2) CMS will notify affected Medicare beneficiaries and suppliers when it designates a regional carrier (in accordance with paragraph (d) of this section) to process DMEPOS claims (as defined in paragraph (b) of this section) for all Medicare beneficiaries residing in their respective regions (as designated under paragraph (c) of this section).

(3) CMS may contract for the performance of National Supplier Clearinghouse functions through a contract amendment to one of the DME regional carrier contracts or through a contract amendment to any Medicare carrier contract under § 421.200.

(4) CMS will periodically recompile the contracts for the DME regional carriers. CMS will also periodically recompile the National Supplier Clearinghouse function.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 29, 2003.

**Thomas A. Scully,**  
Administrator, Centers for Medicare & Medicaid Services.

Approved: December 31, 2003.

**Tommy G. Thompson,**  
Secretary.

[FR Doc. 04-6833 Filed 3-25-04; 8:45 am]

BILLING CODE 4120-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0, 4 and 63

[ET Docket No. 04-35; FCC 04-30]

### Commission's Rules Concerning Disruptions to Communications

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to extend the Commission's disruption reporting requirements to communications providers who are not wireline carriers. The Commission also proposes to streamline compliance with the reporting requirements through electronic filing with a "fill in the blank" template and by simplifying the application of that rule. In addition, the Commission proposes to delegate authority to the Chief, Office of Engineering and Technology, to make the revisions to the filing system and template that are necessary to achieve the goals of this rulemaking proceeding. We believe that these proposals will

allow the Commission to obtain the necessary information regarding service disruptions in an efficient and expeditious manner and to achieve significant concomitant public interest benefits.

**DATES:** Comments must be filed on or before May 25, 2004, and reply comments June 24, 2004. Written comments on the proposed and/or modified information collection(s) must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 25, 2004.

**FOR FURTHER INFORMATION CONTACT:** Charles Iseman at (202) 418-2444, [charles.iseaman@fcc.gov](mailto:charles.iseaman@fcc.gov), Office of Engineering and Technology, TTY (202) 418-2989.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket No. 04-35, FCC 04-30, adopted February 12, 2004, and released February 23, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at [www.fcc.gov](http://www.fcc.gov). Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 25, 2004, and reply comments on or before June 24, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail.

To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All paper filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

### Initial Paperwork Reduction Act of 1995 Analysis

This NPRM contains proposed modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. Public and agency comments are due May 25, 2004. PRA comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the

respondents, including the use of automated collection techniques or other forms of information technology.

Written comments by the public on the new or modified information collections are due May 25, 2004. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1-CA804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov), and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to [LaLonde@omb.eop.gov](mailto:LaLonde@omb.eop.gov) or by fax to 202-395-5167.

OMB Control Number: 3060-0484.

Title: Part 4 of the Commission's Rules Concerning Disruptions to Communications.

Form No.: NA.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and/or State, local or tribal governments.

Number of Respondents: 52.

Estimated Time per Response: 5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,040 hours.

Total Annual Costs: \$41,600.

Needs and Uses: In recognition of the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well-being of our Nation, and in view of the increasing importance of non-wireline communications in the Nation's communications networks and critical infrastructure, we propose to extend our disruption reporting requirements to communications providers who are not wireline carriers. We also propose to move the outage-reporting requirements from part 63 of our rules to part 4.

### Summary of Notice of Proposed Rulemaking

1. This Notice of Proposed Rulemaking (NPRM) proposes to extend the Commission's disruption reporting requirements to communications providers who are not wireline carriers and to move the outage-reporting requirements from rule part 63 to part 4. In making these proposals, the Commission recognizes that, although these requirements were originally established within the telecommunications common carrier

context, it is now appropriate to adapt and apply them more broadly across all communications platforms to the extent discussed in the NPRM. In an effort to promote rapid reporting and minimal administrative burden on covered entities, the Commission also proposes to streamline compliance with the reporting requirements through electronic filing with a "fill in the blank" template and by simplifying the application of the existing rule (47 CFR 63.100). The Commission seeks comment on these proposals and notes, as an initial matter, that the actual text of the final rules and the final reporting template that will be adopted may differ from the text and template that are contained in Appendix A and Appendix B to the Notice of Proposed Rulemaking. Accordingly, the Commission invites interested parties to file comments and reply comments to address the issues that are discussed in this NPRM as well as the specific rules that are proposed in Appendix A and the reporting template that is proposed in Appendix B. The Commission also requests comment on any other changes to its communications outage reporting rules that would eliminate inadequacies in these reporting requirements. Based on the comments that the Commission receives in this proceeding and on its analysis of the information that is before it, the Commission may make such additional modifications to its existing and proposed communications outage-reporting requirements as may be necessary or desirable to fulfill, more fully, the objectives that are set forth in the Communications Act.

2. Communications disruptions can be characterized as consisting of: (i) A lack of "generally-useful availability" of communications, which means an inability to access a network (e.g., an inability to acquire dial-tone); or (ii) a lack of "generally-useful connectivity" of communications, which means the inability to complete the communication effectively after a network has been successfully accessed. Section 63.100 applies to both types of communications disruptions which are further classified into, essentially, two types of reporting requirements: (i) The reporting of disruptions that could have a direct effect on the safety of life or property or on the National defense and security; and (ii) the reporting of outages that are otherwise sufficiently significant that they warrant reporting. The Commission proposes to retain this basic type of reporting framework with modifications to improve its usefulness, and seek comment on this proposal.

3. *General Outage-Reporting Criteria and Proposed Revisions to Them.*

Currently, the general reporting criteria requires that an outage be reported whenever its duration is at least 30 minutes and the number of customers potentially affected by the outage is at least 30,000. By the term "customer" the Commission means the individual end user (i.e., a person), but some carriers have counted each large corporate or organizational customer as a single "customer." The latter interpretation leads to underreporting of significant outages. Another anomaly in the current rule is that outages whose duration lasts many hours or days but that affect slightly less than 30,000 customers are not required to be reported.

4. The Commission proposes to correct these anomalies in its general reporting criteria by requiring that an outage report be filed whenever the duration of the outage is at least 30 minutes and the outage potentially affects at least 900,000 user-minutes. A user-minute would be defined as the mathematical product of the number of end users and the outage duration expressed in minutes. For telephony, an "end user" would be defined as an assigned telephone number, and the number of potentially-affected user minutes would be the mathematical result of multiplying the outage's duration (expressed in minutes) by the number of potentially-affected assigned telephone numbers. ("Assigned telephone numbers" would be defined as the sum of "assigned numbers" and "administrative numbers," where the latter terms are currently defined in 47 CFR 52.15(f)(i) and (iii).) We seek comment on this proposal.

5. *Wireline Communications Providers.* The outage reporting requirements (subject to the proposed revisions) would continue to apply to "wireline providers," which are entities that provide terrestrial communications through direct connectivity, predominantly by wire, coaxial cable, or optical fiber, between the serving central office (as defined in the Appendix-Glossary to 47 CFR part 36) and end user location(s). (For outage reporting purposes, wireline communications includes any augmentation through the use of microwave links and other links that use other radio frequencies.)

6. *LEC and IXC Tandem Outages.* For the tandem facilities of interexchange or local exchange carriers, the current rule requires that "carriers must, if technically possible, use real-time to determine whether the criteria for reporting an outage have been reached. Carriers must report IXC and LEC tandem outages \* \* \* where more than 90,000 calls are blocked during a period

of 30 or more minutes for purposes of complying with the 30,000 potentially affected customers threshold,” 47 CFR 63.100(g). The NPRM proposes to modify this rule to replace the reference to “customers” with a reference to “user-minutes,” for consistency purposes. We also note that the term “blocked calls” is not clearly defined in § 63.100 and that some companies count only *originating* calls that are blocked, while other companies count both *originating* and *terminating* blocked calls. To eliminate this ambiguity and to gain an understanding of the full impact of each outage, as well as to promote consistent reporting by all carriers, the Commission proposes to require that all blocked calls, regardless of whether they are originating or terminating calls, be counted in determining compliance with the outage reporting threshold criteria. For those outages where the failure prevents the counting of blocked calls in either the originating or terminating direction, or in both directions, historical data may be used. Three times the actual number of carried calls for the same day of the week and the same time of day should be used as a surrogate for the number of blocked calls that could not be measured directly. “Blocked calls” are a “running measurement” made for the total duration of the outage. That is, an outage that blocks only 50,000 calls in the first 30 minutes may nevertheless reach the 90,000 blocked-call threshold criterion if the outage lasts, for example, for one hour. In relatively rare cases, it may be possible to obtain the number of originating blocked calls only, or the number of terminating blocked calls only, but not both. For these cases, the Commission proposes to require that the blocked-call count be doubled to compensate for the missing data, unless the carrier certifies that only one direction of the call set-up was affected by the outage. The Commission seeks comment on these proposals.

7. *Cable Communications Providers—Circuit Switched Telephony.* Circuit-switched telephony provided by cable operators has always been subject to the communications disruptions reporting requirements set forth in 47 CFR 63.100. The Commission proposes to clarify this point and to modify these requirements in a manner consistent with its proposed changes (*i.e.*, 30 minutes duration and 900,000 user-minutes criteria) to the outage-reporting requirements for wireline telephony and seek comment on this proposal.

8. *Satellite Communications Providers.* Given the increased role played by satellites in our Nation’s communications infrastructure, and the

likelihood that the importance of satellite communications will grow substantially in the future, the Commission proposes to eliminate the satellite exemption in its outage reporting rules and proposes to require that all major failures be reported by providers of satellite communications to the public. This would apply to satellites or transponders used to provide telephony and/or paging. The proposal does not include satellites or transponders used solely to provide intra-corporate or intra-organizational private telecommunications or solely for the one-way distribution of video or audio programming. The Commission seeks comment on this proposal.

9. Satellite communications have space components and terrestrial components. The proposed reporting requirements cover all satellite communications outages, regardless of whether they result from failures in the space or terrestrial components. The proposal would require the reporting of any loss of complete accessibility to a satellite or any of its transponders for 30 minutes or more. Such outages could result, for example, from an inability to control a satellite, a loss of uplink or downlink communications, Telemetry Tracking and Command failures, or the loss of a satellite telephony terrestrially-based control center, all of which the Commission deems to be major infrastructure failures. Analogous to the cases of wireline, wireless, and cable communications, the proposal would also require the reporting of the loss, for 30 minutes or more, of any satellite link or its associated terrestrial components that are used to provide telephony and/or paging, whenever at least 900,000 user-minutes are potentially affected. The Commission seeks comment on these proposals.

10. *Wireless Communications Providers.* Similar to the case of satellite communications, the Commission recognizes the increased and critical role of wireless communications in our Nation’s communications infrastructure and proposes to eliminate the exemption for wireless communications in its outage reporting rules. The term “wireless service providers,” refers to entities that provide communications by using cellular architecture in the Cellular Radio Telephone Service (“CRTS”) (part 22 of the Commission’s Rules); Personal Communications Service (“PCS”) (part 24); and enhanced Special Mobile Radio Service (“SMRS”) (part 90) (such as that provided by NEXTEL). It also includes Short Message Service (“SMS”) communications, which consist of short text messages (typically 20 octets or

less), as well as CMRS paging services (see 47 CFR 20.9(a)(1), (6), 22.99, 22.507(c), and 90.7) and narrowband PCS (part 24), as wireless services. Consistent with the 30 minutes/900,000 user-minutes criteria, the Commission proposes to require wireless service providers to report outages of at least 30 minutes duration that potentially affect 900,000 user-minutes. While the Commission believes in the importance of a common metric that is based on the outage impact on people irrespective of the communications system involved, it also seeks comment on possible alternative criteria that would yield outage data that would be useful in developing best practices. Paging remains an important technology for emergency responders and therefore the Commission is proposing to include paging service providers within the scope of the outage reporting requirements for wireless service providers. For those paging systems in which each individual user is assigned a telephone number, the Commission proposes to define an end user as an assigned telephone number, and the number of potentially-affected user minutes would be the mathematical result of multiplying the outage’s duration (expressed in minutes) by the number of potentially-affected assigned telephone numbers. It is the Commission’s understanding that for other paging systems in which a caller must first dial a central number (*e.g.*, an “800 number”) and then dial a unique identifier for the called party, the paging provider maintains a database of identifiers for its end users and would therefore know how many of its end users are potentially affected by any particular outage. The number of potentially-affected end users for those paging systems would simply be the mathematical result of multiplying the outage’s duration (expressed in minutes) by the number of end users potentially affected by the outage. The Commission seeks comment on this interpretation and proposed addition to our rules, and on whether there are alternative approaches for measuring the extent of the impact of the outage of CMRS paging systems. For other wireless services, the determination of the number of potentially affected users can be more complex.

11. To measure the extent of wireless services system degradation, the Commission proposes to require the use of blocked calls instead of using assigned telephone numbers as a proxy for the usefulness of the system to users. In the wireless telephony service, a call is deemed “blocked” whenever the

Mobile Switching Center (MSC, also referred to as a Mobile Telephone Switching Office, or MTSO) cannot process the call request of an authenticated, registered user. Call blocking can result from a malfunction or from an overloaded condition in the wireless service network. Usually when calls are blocked, users newly attempting to access the system cannot be registered on the system until the underlying problem is corrected. Because wireless service networks typically provide user access through several MSCs, an outage on a single MSC affects only those subscribers served by that MSC. Accordingly, call blocking on a single MSC would be reportable if it were to result in an outage of at least 30 minutes duration that meets or exceeds the proposed 900,000 user-minute criterion. The Commission seeks comment on this proposal.

12. To estimate the number of potential users affected by a significant system degradation of wireless service facilities, we propose to require providers to determine the total call capacity of the affected MSC switch (or, in the case of a MSC that has more than one switch, the total call capacity of all switches in the affected MSC) and multiply the call capacity by the concentration ratio. Although the concentration ratio may vary among MSCs, we believe that, on average, the concentration ratio used for determining the outage reporting threshold should be uniform to facilitate correlative analyses of outage reports from different wireless providers. Based upon discussions with telecommunications engineers and our understanding of typical traffic loading/switch design parameters, we propose that the concentration factor be ten. Thus, a MSC switch that is capable of handling 3,000 simultaneous calls would have 30,000 potentially affected users (*i.e.*,  $(3,000) \times (10) = 30,000$ ). The Commission believes that this proposed concentration factor should adequately account for those users that are in the service area of the MSC and are thus eligible for immediate service. This factor would also take into account users that are assigned to the local home location register database for the MSC as well as potential visitors. Thus, under the general outage-reporting criteria that we are proposing, wireless service providers would be required to report MSC outages of at least 30 minutes duration that potentially affect at least 900,000 user-minutes. The Commission seeks comment on this proposed addition to our rules and on whether there are specific types of wireless

systems for which a concentration factor of other than ten should be applied. As with its proposals for CMRS paging providers, the Commission also seeks comment on possible alternative criteria for wireless service providers and approaches to measure the extent of the impact of system degradation that would yield useful outage data on which to base the development of best practices.

13. The Commission further proposes to require the filing of an outage report whenever an MSC is incapable of processing communications for at least 30 minutes, without regard to the number of user-minutes potentially affected by the outage. The Commission reason for this specific proposal on MSC-outage reporting is based on its continuing need to be aware of the underlying robustness, as well as the overall reliability, of wireless networks. The MSC, in this regard, is a critical architectural component in wireless systems that is designed to process significant levels of traffic aggregation and call routing that are dependent upon SS7 signaling. The Commission also seeks comment on these additional conclusions and further proposal.

14. *Outages That Potentially Affect Special Offices and Facilities, or 911 Services and Facilities.* The Commission also proposes to simplify the requirements for reporting communications outages that potentially affect special offices and facilities or potentially affect the ability to complete 911 calls. Section 63.100(e) of our rules presently requires the reporting of outages of at least 30 minutes duration that potentially affect special offices and facilities. The Commission proposes to keep this requirement substantively intact with a minor modification that will make it applicable to all airports, not just major airports. Section 63.100(e), however, only applies to local exchange carriers, interexchange carriers, and competitive access providers. In light of the rapid changes that have occurred since this rule was adopted, we anticipate that special offices and facilities will increasingly take advantage of new communications technologies and services as they become available, with decreasing regard for the particular technological platform over which they are provided. As a consequence, the Commission proposes to extend the requirement to report outages potentially affecting special offices and facilities to include all communications providers for which we are proposing general communications outage-reporting requirements. These include wireline, wireless, cable, and satellite

communications providers. The Commission seeks comment on this proposal.

15. In addition, the current requirements for reporting outages that potentially affect 911 services are differentiated by the length of the outage, the number of lines potentially affected, and other factors. The Commission tentatively conclude that these requirements are overly complex. The Commission proposes to revise these rules and simply require the reporting of all communications outages of at least 30 minutes duration that potentially affect the ability to originate, complete, or terminate 911 calls successfully (including the delivery of all associated name, identification, and location data). Because the Commission anticipates that the public safety community and 911-type services will also evolve to utilize new technologies, services, and platforms, it proposes to apply this requirement to all communications providers for which it is proposing general outage-reporting requirements. The Commission has been aware for some time that the use of wireless telephony to place emergency 911 calls has been increasing. Accordingly, we adopted rules requiring wireless providers to facilitate the work of E911 service responders by providing to Public Safety Answering Points ("PSAPs") both the automatic name information (ANI) and automatic location information (ALI) associated with the handset. The reliability of E911 service continues to be of vital concern to this Commission and is an essential part of our responsibilities. The Commission therefore proposes to require wireless service providers to report any failure of a wireless network element that prevents a MSC from receiving, or responding to, 911 calls (including the delivery of all associated data) for at least 30 minutes. The Commission seeks comment on this proposed rule and whether local network element failures or degradations should also be reported to the affected PSAPs in real time. In addition, the Commission seeks comments as to whether the time metric that is most appropriate for determining that a failure of call completion to a PSAP is significant and should be reported in 30 minutes. Finally, if a commenting party were to conclude that metric of 30 minutes is not the most appropriate one, the Commission then requests such party include in its comments its reasoning for that conclusion and a recommendation for a more appropriate time interval for E911 emergency calls.

16. *E911 and the MSS.* In the “E911 Scope” proceeding the Commission decided to require Mobile-Satellite Service (“MSS”) providers of voice service that is interconnected with the Public Switched Telephone Network (“PSTN”) to establish E911 call centers. In the *Matter of Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems and Amendment of parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements et al.*, CC Docket No. 94–102 and IB Docket No. 99–67, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03–290, released December 1, 2003, at ¶¶ 20–48 and 111–112 (adopting 911 service call center requirements and seeking further comment on how to implement E911 requirements for the MSS), 69 FR 6578 (February 11, 2004; final rule) and 69 FR 6595 (February 11, 2004; proposed rules). In that proceeding, the Commission also directed the Network Reliability and Interoperability Council (“NRIC”) to study several E911 implementation technical issues for satellite systems. Finally, the Commission sought comment on whether transition periods are necessary for MSS providers with an ancillary terrestrial component (ATC) to comply with the terrestrial wireless E911 requirements and on proposed reporting and record-keeping requirements in connection with implementation of the emergency call center rule. In the instant proceeding, the Commission now proposes to subject MSS providers of interconnected voice service to E911 outage-reporting requirements but to delay implementation of the proposed requirements for MSS providers until the MSS-implementation issues raised in the *Second Further Notice* in the E911 Scope proceeding are resolved. The Commission seeks comment on the instant proposal.

17. *Elimination of Separate Requirement to Report Outages Caused by Fires.* A separate reporting requirement, set forth in § 63.100(d), pertains to the reporting of outages caused by fires. Carriers are required to report fire-related incidents that affect 1,000 or more service lines for a period of 30 minutes or more. Only a few outages have been reported pursuant to this subsection and these have tended to be very minor outages. In general, major fire outages have met the more general reporting criteria because they exceed the current 30-minute, 30,000-customer threshold criteria. Such outages would

also exceed the proposed 900,000 user-minute threshold criterion. Thus, retention of separate outage reporting criteria for fire-related incidents appears to be an unnecessary complication for reporting carriers that does not appear to provide any significant benefit to the Commission or to the public. The Commission therefore proposes to eliminate this requirement and seeks comment on its conclusion and its proposed elimination of this rule.

18. *Other Simplifications to the Existing Rule.* The rule requires the filing of an initial outage report that contains contact information so that additional information can be obtained if necessary. Initial reports are helpful in determining whether an immediate response is required (e.g., terrorist attacks or systemic failures) and whether patterns of outages are emerging (e.g., phased terrorist attacks) that warrant further coordination or other action. Section 63.100 of the Commission’s rules currently distinguishes between how quickly outages, of at least 30 minutes duration, are required to be reported, based on whether the number of customers potentially affected meets or exceeds a threshold criterion of 50,000. If this secondary threshold is exceeded, the carrier’s initial report must be made “by facsimile or other record means delivered within 120 minutes of the carrier’s first knowledge. \* \* \*” Otherwise, when such outages potentially affect less than 50,000 customers (but satisfy the primary threshold criterion of 30,000 customers), the initial notification must be delivered within “3 days of the carrier’s first knowledge.” The Commission believes that this distinction complicates the outage-reporting requirements without any offsetting benefit and should, therefore, be eliminated. The current rule also requires that the filing be made “by facsimile or other record means.” In the future, the ability to file initial reports electronically (e.g., over the Internet), coupled with the “fill in the blank” template that is proposed in this NPRM, should make it possible for communications providers to notify us more promptly, and more easily, when communications disruptions arise. The improvements in filing requirements, as well as the electronic filing process that we are proposing, should make it easy for communications providers to file all initial disruption reports within 120 minutes of discovering a reportable outage. This, in turn, will facilitate more rapid action in the event of a serious crisis, and will also facilitate more rapid, more coherent, and more accurate

responses when multiple outages are occurring during simultaneous (or virtually coincident) crises. The Commission therefore proposes to require all initial outage reports to be filed electronically within 120 minutes of becoming reportable. All final outage reports would continue to be required to be filed within 30 days of the filing of the initial report. The Commission seeks comment on these conclusions and proposed requirements. It also seeks comment as to whether, given the rapid response time that the Internet and circuit-switched telephony (e.g., dial-up modems) enable, the Commission should require the filing of initial outage reports over the Internet within a shorter period of time than the 120-minute period discussed.

19. The Commission’s experience in administering § 63.100 has enabled it to understand more completely other aspects of its reporting requirements that should be revised. As a consequence, the Commission finds that existing requirements for final disruption reports should be modified to require inclusion of the following information:

- A statement as to whether the reported outage was at least partially caused because the network did not follow engineering standards for full diversity (redundancy); and
- A statement of all of the causes of the outage. Outages may result from the occurrence of several events. The current rule requires that the final report identify the root cause. Experience in administering this part of its rules has convinced the Commission that there may be more than one root cause and that, to facilitate analysis, all causes of each outage should be reported.

In addition, as the communications market evolves, the Commission anticipates that communications may increasingly be offered through complex arrangements among communications providers and other entities (which may or may not be affiliated with the provider) that maintain or provide communications systems or services for them. For example, local exchange carriers have long provided Signaling System 7 (“SS7”) communications for their own use as well as for their customers, but some entities have more recently emerged to provide SS7 for such carriers. The Commission proposes to require these entities to comply with any disruption reporting requirements that it may adopt to the same extent as would be required of them if they were communications providers directly providing voice or data communications or maintaining the system. The

Commission seeks comment on these proposals.

20. *Major Infrastructure Failures.* The communications outage reports that the Commission has received over the past ten years have provided significant insight into some of the major problems affecting circuit-switched voice communications. The infrastructure used to provide these services, however, is also used to provide many other services that are essential to Homeland Security and our Nation's economy. A tiny glimpse into the other uses of our Nation's communications infrastructure was provided in Verizon's network outage report covering the World Trade Center disaster on September 11, 2001. That report states that "some 300,000 dial tone lines and some 3.6 million DS0 equivalent data circuits were out of service" as a result of the damage. The ratio of more than ten times as many DS0 equivalent services using the infrastructure as dial tone lines is not unusual in a major metropolitan area. Most of the DS0 equivalent circuits are used to carry what are frequently called "special services." While the Commission has not previously required the reporting of communications outages that affected large numbers of special services, it needs to recognize in its communications disruption reporting rules the continuously increasing importance of data communications throughout the United States. The Commission believes that its rules should be revised to account for important attributes of special services that have not been fully addressed in the earlier sections of this NPRM that focused on different communications platforms. Rather than collect information that is limited specifically to "special services," however, the Commission proposes to directly address the underlying issue and collect information on the potential impact on all communications services of major infrastructure failures.

21. *DS3 Minutes.* As a consequence, the Commission proposes to establish additional outage-reporting criteria that would apply to failures of communications infrastructure components having significant traffic-carrying capacity. This requirement would apply to those communications providers for which the Commission has already proposed outage-reporting requirements and would also apply to those affiliated and non-affiliated entities that maintain or provide communications systems on their behalf. The Commission believes that the threshold reporting criterion for such infrastructure outages should be based on the number of DS3 minutes

affected by the outage because DS3s are the common denominator used throughout the communications industry as a measure of capacity. A DS3 can handle 28 DS1s (T1s) or 672 DS0 (64 kbps voice or data circuits). On the higher end of the multiplexing hierarchy, an OC3 includes 3 DS3s, an OC48 includes 48 DS3s, and an OC192 includes 192 DS3s. Specifically, the Commission proposes to require the reporting of all outages of at least 30 minutes duration that potentially affect at least 1,350 DS3 minutes. The Commission proposes to count only working DS3s in this measure, by which it means those actually carrying some traffic of any type at the time of a failure. The Commission requests comment on these conclusions and proposed rules.

22. *Signaling System 7 ("SS7").* SS7 systems provide information to process, and terminate, virtually all domestic and international telephone calls irrespective of whether the call is wireless, wireline, local, long distance, or dial-up telephone modem access to ISPs. SS7 is also used in providing SMS text messaging services, 8XX number (*i.e.*, toll free) services, local number portability, VoIP Signaling Gateway services, 555 type number services, and most paging services. Currently the Commission's rules do not require outage reporting by those companies that do not provide service directly to end users. In addition, even for companies currently subject to outage reporting requirements, no threshold reporting criteria are currently based on blocked or lost SS7 messages.

23. As a consequence of the Commission's recognition of the critical role that SS7 plays in the national communications infrastructure, it proposes the addition of SS7 communications disruption reporting requirements. To be more specific, all providers of Signaling System 7 service (or its equivalent) would be required to report those communications disruptions of at least 30 minutes duration for which the number of blocked or lost ISDN User Part (ISUP) messages (or its equivalent) was at least 90,000. This reporting threshold is similar to the blocked-call criterion that was previously addressed in connection with LEC and IXC Tandem outages. The Commission requests comment on these conclusions and proposed addition to its rules.

24. *Electronic Filing and New Reporting Process.* Consistent with authority granted by the Communications Act of 1934, as amended, and in furtherance of the objectives of the Government Paperwork

Elimination Act, the Commission proposes to require that communications outage reports be filed electronically. Electronic filing would have several major advantages for the Commission, reporting communications providers, and the public. For example:

- Providers would be able to file reports more rapidly and more efficiently.
- Information would be updated immediately. The expenses and efforts that are associated with the outage reporting process should be reduced substantially which, in turn, should result in continuing productivity gains.
- Changes to outage report data should be more easily accessible by communications providers, the public, and the Commission. Thus, reporting entities should be able to file initial and final report information more easily, and interested parties should also be able to access this information more quickly.

- Changes to electronic input form(s) can be implemented more quickly. Two of the purposes of the reliability database are to help identify causes of outages and to refine best practices for averting failures in communications networks. As networks evolve and experience is gained, the data fields can be more easily revised to improve the quality of the information received to reflect changes in communications infrastructures and management procedures.

- In addition, security precautions can be implemented to authenticate access by authorized users.

25. The Commission's current outage reporting rules do not require, or even refer to, electronic filing (other than by facsimile). Although it is understandable, in retrospect, that those rules did not incorporate electronic filing because the Internet was just beginning to expand in 1992, the time has now arrived to implement electronic filing procedures. These procedures should not only facilitate compliance with the objectives that are expressed in the Government Paperwork Elimination Act but also should improve service to the public, enhance the efficiency of our internal operations, and virtually eliminate any burden that would be associated with complying with the proposed reporting requirements. It may, however, be desirable for other reasons to have alternative ways by which outage reports can be filed with this Commission. The Commission requests comment on whether there are any circumstances under which electronic filing would not be appropriate and, if so, on what alternative filing procedures should be

used in such circumstances. The Commission recognizes that as experience is gained with the electronic filing of outage reports, modifications to the filing template may be necessary to fully implement an automated outage reporting system that will maximize reporting efficiency and minimize the time for providers to prepare, and for the Commission staff to review, outage reports. The Commission also proposes to delegate authority to the Chief, Office of Engineering and Technology to make the revisions to the filing system and template that may become necessary to achieve these goals. The Commission seeks comment on these proposals.

26. Historically, outage reports from wireline carriers have been available to the public. The Commission seeks comment as to whether this policy should not be applied, in whole or in part, to outage reports that will be filed by wireless, wireline, satellite, or cable providers and, if so, why.

#### Initial Regulatory Flexibility Act Analysis

27. As required by the Regulatory Flexibility Act ("RFA"),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Act Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* ("NPRM"). Written public comments are requested on this IRFA and must be filed by May 25, 2004. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, the NPRM (or summaries thereof), including the IRFA, will be published in the **Federal Register**.<sup>3</sup>

A. *Need for and Objectives of the Proposed Rules.* We seek comment on whether communications providers, whose customers experience outages on any facilities that the providers own, operate, lease, or otherwise utilize, should be required to report those outages that meet the revised reporting criteria set forth in our proposed amendments to § 63.100 of the Commission's Rules, 47 CFR 63.100. The current rule applies outage-reporting requirements only to wireline common carriers and to circuit-switched telephony service, if any, that is offered by cable television service providers.

Our proposal, however, would extend such requirements to those commercial mobile radio service (CMRS) providers that employ cellular architecture ("wireless service providers"), terrestrial or satellite paging providers, satellite communications providers, affiliated or non-affiliated entities that maintain or provide communications systems or services used by the provider in offering such communications, and Signaling System 7 (SS7) providers. We believe that this proposed extension of the outage reporting requirements will provide needed information for fulfilling our statutory responsibilities with respect to the reliability of communications and their underlying infrastructures, given the increasing substitutability of communications through different media and our Nation's increasing reliance on these substitutes for Homeland Defense and National Security. Similarly, the changes that we propose in the threshold reporting criteria are well tailored, we believe, to accomplish this objective. Our proposal to move the outage-reporting requirements out of part 63 and into part 4 of the Commission's rules reflects that the proposed rules would be adapted to and applied broadly across all communications platforms to the extent discussed in the *Notice of Proposed Rule Making*. Finally, the proposed rules would require electronic filing of outage reports, pursuant to the requirements of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. 1704.

B. *Legal Basis.* The legal basis for the rule changes proposed in this NPRM are contained in sections 1, 4(i), 4(k), 4(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 303(v), 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 303(v), 403, 621(b)(3), and 621(d), and in section 1704 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. 1704.

C. *Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Notice May Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.<sup>4</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms

"small business," "small organization," and "small governmental jurisdiction."<sup>5</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>6</sup> A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>7</sup>

We further describe and estimate the number of small entity licensees and regulates that may be affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.<sup>8</sup> The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,<sup>9</sup> Paging,<sup>10</sup> and Cellular and Other Wireless Telecommunications.<sup>11</sup> Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

We have included small incumbent LECs 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 wired telecommunications carrier having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>12</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation

<sup>5</sup> *Id.* 601(6).

<sup>6</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

<sup>7</sup> 15 U.S.C. 632.

<sup>8</sup> FCC, Wire line Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3 (May 2002) (*Trends in Telephone Service*).

<sup>9</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>10</sup> 13 CFR 121.201, NAICS code 517211.

<sup>11</sup> 13 CFR 121.201, NAICS code 517212.

<sup>12</sup> 5 U.S.C. 601(3).

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, 110 Stat. 847 (1996).

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

<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. 603(b)(3), 604(a)(3).



because any such dominance is not "national" in scope.<sup>13</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

**Wired Telecommunications Carriers.** The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>14</sup> According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.<sup>15</sup> Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.<sup>16</sup> Thus, under this size standard, the great majority of firms can be considered small.

**Incumbent Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>17</sup> According to Commission data,<sup>18</sup> 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

**Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>19</sup> According to Commission data,<sup>20</sup> 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are "Other Local Service Providers." Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

**Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>21</sup> According to Commission data,<sup>22</sup> 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

**Wireless Service Providers.** The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging<sup>23</sup> and Cellular and Other

Wireless Telecommunications.<sup>24</sup> Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's most recent data,<sup>25</sup> 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 have 1,500 or fewer employees and 442 have more than 1,500 employees.<sup>26</sup> Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted.

**Broadband Personal Communications Service.** The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>27</sup> For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>28</sup> These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.<sup>29</sup> No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>30</sup> On March 23, 1999, the Commission re-

<sup>13</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a); 5 U.S.C. 601(3). SBAS regulations interpret "small business concern" to include the concept of dominance on a national basis, 13 CFR 121.102(b).

<sup>14</sup> 13 CFR 121.201 (1997), NAICS code 513310 (changed to 517110 in October 2002).

<sup>15</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000).

<sup>16</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

<sup>17</sup> 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

<sup>18</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (Aug. 2003) (hereinafter "Trends in Telephone Service"). This source uses data that are current as of December 31, 2001.

<sup>19</sup> 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

<sup>20</sup> "Trends in Telephone Service" at Table 5.3.

<sup>21</sup> 13 CFR 121.201, NAICS code 51710 (changed from 513310 in Oct. 2002).

<sup>22</sup> Trends in Telephone Service at Table 5.3.

<sup>23</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517211.

<sup>24</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>25</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, (August 2002).

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

<sup>27</sup> See Amendment of Parts 20 and 24 of the Committee's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Report and Order, 61 FR 33859 (July 1, 1996); see also 47 CFR 24.720(b).

<sup>28</sup> See Amendment of Parts 20 and 24 of the Committee's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Report and Order, 61 FR 33859 (July 1, 1996).

<sup>29</sup> See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding PP Docket No. 93-256, Fifth Report and Order, 59 FR 37566 (July 22, 1994).

<sup>30</sup> FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997). See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, Second Report and Order, 62 FR 55348 (Oct. 24, 1997).



auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses would have included the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers would have been small entities that could be affected by the rules and policies adopted herein. The results of Auction No. 35, however, were set aside and the licenses previously awarded to NextWave, which had qualified as a small entity, were reinstated. Therefore, the Commission estimates that less than 260 broadband PCS providers will be small entities that may be affected by the rules and policies adopted herein.

**Narrowband Personal Communications Services.** To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.<sup>31</sup> 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.<sup>32</sup> In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

**800 MHz and 900 MHz Specialized Mobile Radio Licenses.** The Commission awards "small entity" and "very 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, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively.<sup>33</sup> These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service 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. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or

very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

**Paging.** The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees.<sup>34</sup> According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year.<sup>35</sup> Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more.<sup>36</sup> Thus, under this size standard, the majority of firms can be considered small.

**Rural Radiotelephone Service.** The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>37</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).<sup>38</sup> The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," i.e., an entity employing no more than 1,500 persons.<sup>39</sup> 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.

**Cable and Other Program Distribution.**<sup>40</sup> This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to Census Bureau data for 1997, there were a total

<sup>34</sup> 13 CFR 121.201, NAICS code 517211 (changed from 513321 in October 2002).

<sup>35</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513321 (issued October 2000).

<sup>36</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

<sup>37</sup> The service is defined in 22.99 of the Commission's Rules, 47 CFR 22.99.

<sup>38</sup> BETRS is defined in 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

<sup>39</sup> 13 CFR 121.201, NAICS code 517212.

<sup>40</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 513220 (changed to 517510 in October 2002).

<sup>31</sup> In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92-100, Docket No. PP 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).

<sup>32</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

<sup>33</sup> 47 CFR 90.814(b)(1).

of 1,311 firms in this category, total, that had operated for the entire year.<sup>41</sup> Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

**Satellite Telecommunications Providers.** The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 or less in average annual receipts.<sup>42</sup> For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.<sup>43</sup> Of this total, 273 firms had annual receipts of under \$10 million, and an additional twenty-four firms had receipts of \$10 million to \$24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

**Signaling System 7 (SS7) Providers.** The Commission has not developed a definition of small entities applicable to Signaling System 7 providers. We shall apply the SBA's small business size standard for Other Telecommunications, which identifies as small all such companies having \$12.5 million or less in annual receipts.<sup>44</sup> We believe that there are no more than half-a-dozen SS7 providers and doubt that any of them have annual receipts less than \$12.5 million. Nonetheless, we shall assume that there may be several SS7 providers that are small businesses which could be affected by the proposed rules. We request comment on how many SS7 providers exist and on how many of these are small businesses that may be affected by our proposed rules.

**D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.** The rules proposed in this NPRM would require telecommunications providers to report those outages that meet specified threshold criteria. These criteria are largely determined by the number of

end users potentially affected by the outage and the duration of the outage, which generally must be at least 30 minutes. Under the current rules, which apply only to wireline carriers and cable television service providers that also provide telecommunications service, only about 200 outage reports per year from all reporting sources combined are filed with the Commission. The proposed revisions to the threshold criteria are not expected to alter the number of outage reports filed annually to a significant degree. Nevertheless, the proposed rules would extend the outage reporting requirements to telecommunications providers that are not currently subject to these rules. Therefore, we anticipate that more than 200 outage reports will be filed annually, but estimate that the total number of reports from all reporting sources combined will be substantially less than 1,000 annually. We note that, occasionally, the proposed outage reporting requirements could require the use of professional skills, including legal and engineering expertise. Without more data, we cannot accurately estimate the cost of compliance by small telecommunications providers. But irrespective of any of the reporting requirements that we are proposing here, we expect that telecommunications providers will track, investigate, and correct all of their service disruptions as an ordinary part of conducting their business operations—and will do so for service disruptions that are considerably smaller than for disruptions that would trigger the reporting criteria that we propose here. As a consequence, we believe that in the usual case, the only burden associated with the reporting requirements contained in this Notice will be the time required to complete the initial and final reports. We anticipate that electronic filing, through the type of template that we have identified in Appendix B of the NPRM, should minimize the amount of time and effort that will be required to comply with the rules that we propose in this proceeding. In this IFRA, we therefore seek comment on the types of burdens telecommunications providers will face in complying with the proposed requirements. Entities, especially small businesses and small entities, more generally, are encouraged to quantify the costs and benefits of the proposed reporting requirements.

**E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.** Since the inception of the outage-reporting requirements in 1992,

the number of outages reported each year has remained relatively steady at about 200. Since 1992, the substitutability of telecommunications through different media has increased substantially, and our Nation increasingly relies on these substitutes for Homeland Defense and National Security. We believe that the proposed telecommunications outage reporting requirements are minimally necessary to assure that we receive adequate information to perform our statutory responsibilities with respect to the reliability of telecommunications and their infrastructures. Also, we believe that the magnitude of the outages needed to trigger the reporting requirements (e.g., outages of at least 30 minutes duration that potentially affect at least 900,000 user minutes) are sufficiently high as to make it unlikely that small businesses would be impacted significantly by the proposed rules. Finally, we believe that the proposed requirement that outage reports be filed electronically would significantly reduce the burdens and costs currently associated with manual filing processes.

**F. Federal Rules That Might Duplicate, Overlap, or Conflict With the Proposed Rules.** None.

#### Ordering Clauses

26. Pursuant to the authority contained in sections 1, 4(i)–(j), 4(k), 4(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 154(k), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d), and in § 1704 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. 3504, this Notice of Proposed Rulemaking IS ADOPTED.

27. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects

##### 47 CFR Part 0

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

##### 47 CFR Part 4

Communications common carriers, Communications equipment, Reporting

<sup>41</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)", Table 4, NAICS code 513220 (issued October 2000).

<sup>42</sup> 13 CFR 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in Oct. 2002).

<sup>43</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)", Table 4, NAICS code 513340 (issued Oct. 2000).

<sup>44</sup> 13 CFR 121.201, NAICS code 517910.

and recordkeeping requirements, Telecommunications.

#### 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend parts 0 and 63 and add a new part 4 of chapter I of title 47 of the CFR as follows:

#### PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.31 is amended by revising paragraph (i) to read as follows:

##### § 0.31 Functions of the Office.

\* \* \* \* \*

(i) To administer parts 2, 4, 5,,15, and 18 of this chapter, including licensing, recordkeeping, rule making, and revising the filing system and template used for compliance with the Commission's communications disruption reporting requirements.

\* \* \* \* \*

3. Section 0.241 is amended by revising paragraph (a) introductory text, paragraphs (a)(1), and (b) through (g) and by adding paragraphs (h) and (i) to read as follows:

##### § 0.241 Authority delegated.

(a) The performance of functions and activities described in § 0.31 is delegated to the Chief of the Office of Engineering and Technology: *Provided*, that the following matters shall be referred to the Commission en banc for disposition:

(1) Notices of proposed rulemaking and of inquiry and final orders in rulemaking proceedings, inquiry proceedings and non-editorial orders making changes, except that the Chief of the Office of Engineering and Technology is delegated authority to make the revisions to the filing system and template necessary to maximize the efficiency of reporting and responding to critical data and minimize the time for providers to prepare and for the Commission staff to review the communications disruption reports required to be filed pursuant to part 4 of this chapter.

\* \* \* \* \*

(b) The Chief of the Office of Engineering and Technology is delegated authority to administer the Equipment Authorization program as described in part 2 of this chapter.

(c) The Chief of the Office of Engineering and Technology is delegated authority to administer the Experimental Radio licensing program pursuant to part 5 of this chapter.

(d) The Chief of the Office of Engineering and Technology is delegated authority to administer the communications disruption reporting requirements that are contained in part 4 of this chapter and to revise the filing system and template used for the submission of such reports.

(e) The Chief of the Office of Engineering and Technology is delegated authority to examine all applications for certification (approval) of subscription television technical systems as acceptable for use under a subscription television authorization as provided for in this chapter, to notify the applicant that an examination of the certified technical information and data submitted in accordance with the provisions of this chapter indicates that the system does or does not appear to be acceptable for authorization as a subscription television system. This delegation shall be exercised in consultation with the Chief, Media Bureau.

(f) The Chief of the Office of Engineering and Technology is authorized to dismiss or deny petitions for rulemaking which are repetitive or moot or which for other reasons plainly do not warrant consideration by the Commission.

(g) The Chief of the Office of Engineering and Technology is authorized to enter into agreements with the National Institute of Standards and Technology and other accreditation bodies to perform accreditation of test laboratories pursuant to § 2.948(d) of this chapter. In addition, the Chief is authorized to make determinations regarding the continued acceptability of individual accrediting organizations and accredited laboratories.

(h) The Chief of the Office of Engineering and Technology is delegated authority to enter into agreements with the National Institute of Standards and Technology to perform accreditation of Telecommunication Certification Bodies (TCBs) pursuant to §§ 2.960 and 2.962 of this chapter. In addition, the Chief is delegated authority to develop specific methods that will be used to accredit TCBs, to designate TCBs, to make determinations regarding the continued acceptability of individual TCBs, and to develop

procedures that TCBs will use for performing post-market surveillance.

(i) The Chief of the Office of Engineering and Technology is delegated authority to make nonsubstantive, editorial revisions to the Commission's rules and regulations contained in parts 2, 4, 5, 15, and 18 of this chapter.

4. Part 4 is added to read as follows:

#### PART 4—DISRUPTIONS TO COMMUNICATIONS

Sec.

##### General

4.1 Scope, basis and purpose.

##### Reporting Requirements for Disruptions to Communications

4.3 Communications providers covered by the requirements of this part.

4.5 Definitions of outages, special offices and facilities, and 911 special facilities.

4.7 Definitions of metrics used to determine the general outage-reporting threshold criteria.

4.9 Outage reporting requirements—threshold criteria.

4.11 Initial and final communications outage reports that must be filed by communications providers.

4.13 Reports by the National Communications System (NCS) and by special offices and facilities, and related responsibilities of communications providers.

**Authority:** Sections 1, 4(i), 4(j), 4(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d), unless other noted.

##### General

##### § 4.1 Scope, basis and purpose.

By these rules the Federal Communications Commission is setting forth requirements pertinent to the reporting of disruptions to communications and to the reliability of communications infrastructures.

##### Reporting Requirements for Disruptions to Communications

##### § 4.3 Communications providers covered by the requirements of this part.

(a) "Cable communications" providers are cable service providers that also provide circuit-switched telephony. Also included are affiliated and non-affiliated entities that maintain or provide communications systems or services used by the provider in offering telephony.

(b) "Wireless service" providers include Commercial Mobile Radio Service communications providers that use cellular architecture and CMRS

paging providers. In particular, they include Cellular Radio Telephone Service (part 22 of this chapter), Personal Communications Service (PCS) (part 24), and enhanced Special Mobile Radio Service (part 90) providers, as well as those private paging (part 90) providers that are treated as CMRS providers (see § 20.9 of this chapter, 47 CFR 20.9) and narrowband PCS providers (part 24). Also included are affiliated and non-affiliated entities that maintain or provide communications systems or services used by the provider in offering such communications.

(c) "IXC or LEC tandem facilities" refer to the tandem facilities used in the provision of interexchange or local exchange communications.

(d) "Satellite communications providers" use space stations as a means of providing the public with communications, such as telephony and paging. Also included are affiliated and non-affiliated entities that maintain or provide communications systems or services used by the provider in offering such communications.

(e) "Signaling System 7 (SS7)" is a signaling system used to control telecommunications networks. It is frequently used to "set up," process, control, and terminate circuit-switched telecommunications, including but not limited to domestic and international telephone calls (irrespective of whether the call is wholly or in part wireless, wireline, local, long distance, or is carried over cable or satellite infrastructure), SMS text messaging services, 8XX number type services, local number portability, VoIP signaling gateway services, 555 number type services, and most paging services. For purposes of this rule part, SS7 refers to both the SS7 protocol and the packet networks through which signaling information is transported and switched or routed. It includes future modifications to the existing SS7 architecture that will provide the functional equivalency of the SS7 services and network elements that will exist when the final Report and Order is published. SS7 communications providers are subject to the provisions of part 4 of the Commission's rules regardless of whether or not they provide service directly to end users. Also subject to part 4 of the Commission's rules are affiliated and non-affiliated entities that maintain or provide communications systems or services used by the SS7 provider in offering SS7 communications.

(f) "Wireline communications providers" offer terrestrial communications through direct connectivity, predominantly by wire,

coaxial cable, or optical fiber, between the serving central office (as now defined on October 1, 2002 in the glossary to part 36 of this chapter, 47 CFR part 36, Appendix-Glossary) and end user location(s). Also included are affiliated and non-affiliated entities that maintain or provide communications systems or services used by the provider in offering such communications.

(g) "Communications provider" is an entity that provides two-way voice and/or data communications, and/or paging service, by radio, wire, cable, satellite, and/or lightguide for a fee to one or more unaffiliated entities.

#### **§ 4.5 Definitions of outage, special offices and facilities, and 911 special facilities.**

(a) "Outage" is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.

(b) "Special offices and facilities" are defined as airports, major military installations, key government facilities, and nuclear power plants. The member agencies of the National Communications System (NCS) will determine which of their locations are "major military installations" and "key government facilities." 911 special facilities are addressed separately in paragraph (e) of this section.

(c) An outage that "potentially affects" an airport is defined as an outage that: disrupts 50% or more of the air traffic control links or other FAA communications links to any airport; or has caused an Air Route Traffic Control Center (ARTCC) or airport to lose its radar; or causes a loss of both primary and backup facilities at any ARTCC or airport; or affects an ARTCC or airport that is deemed important by the FAA as indicated by FAA inquiry to the provider's management personnel; or has affected any ARTCC or airport and that has received any media attention of which the communications provider's reporting personnel are aware.

(d) A "mission-affecting outage" is defined as an outage that is deemed critical to national security/emergency preparedness (NS/EP) operations of the affected facility by the National Communications System member agency operating the affected facility.

(e) An "outage that potentially affects a 911 special facility" is defined as an outage that potentially affects the ability of a communications provider to complete 911 calls (including all associated name, identification, and location data). Such outages include those significant service degradations

and switch or transport failures where rerouting to the same or an alternative answering location was not implemented. Examples of such outages include one or more of the following situations:

(1) Isolation of one or more Public Service Answering Points (PSAPs) for at least 30 minutes duration; or

(2) Loss of call processing capabilities in one or more E911 tandems for at least 30 minutes duration; or

(3) Isolation of one or more end office switches or host/remote clusters, for at least 30 minutes duration.

#### **§ 4.7 Definitions of metrics used to determine the general outage-reporting threshold criteria.**

(a) "Administrative numbers" are defined as the telephone numbers used by communications providers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards.

(b) "Assigned numbers" are defined as the telephone numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers.

(c) "Assigned telephone number minutes" are defined as the mathematical result of multiplying the duration of an outage, expressed in minutes, by the sum of the number of assigned numbers (defined in paragraph (b) of this section) potentially affected by the outage and the number of administrative numbers (defined in paragraph (a) of this section) potentially affected by the outage.

(d) "DS3 minutes" are defined as the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of previously operating DS3 circuits that were affected by the outage.

(e) "User minutes" are defined as:

(1) Assigned telephone number minutes (as defined in paragraph (c) of this section), for telephony and for those paging systems in which each individual user is assigned a telephone number;

(2) The mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage, for all other forms of communications.

**§ 4.9 Outage reporting requirements—threshold criteria.**

(a) *Cable*. All cable communications providers shall submit electronically an Initial Communications Outage Report to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that: potentially affects at least 900,000 user minutes of telephony service; affects at least 1,350 DS3 minutes; represents the loss of at least one satellite transponder; potentially affects any special offices and facilities (in accordance with paragraphs (a) through (d) of § 4.5); or potentially affects a 911 special facility (as defined in paragraph (e) of § 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and they shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility. (DS3 minutes and user minutes are defined in paragraphs (d) and (e) of § 4.7.) Not later than thirty days after the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Initial and Final reports shall comply with all of the requirements of § 4.11.

(b) *Wireless*. All wireless service providers shall submit electronically an Initial Communications Outage Report to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration: of a Mobile Switching Center (MSC); that potentially affects at least 900,000 user minutes of either telephony and associated data (2nd generation or lower) service or paging service; that affects at least 1,350 DS3 minutes; represents the loss of at least one satellite transponder; that potentially affects any special offices and facilities (in accordance with paragraphs (a) through (d) of § 4.5); or that potentially affects a 911 special facility (as defined in (e) of § 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and they shall convey to that person all available information that may be useful to the

management of the affected facility in mitigating the effects of the outage on callers to that facility. (DS3 minutes and user minutes are defined in paragraphs (d) and (e) of § 4.7.) Not later than thirty days after the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Initial and Final reports shall comply with all the requirements of § 4.11.

(c) *IXC or LEC tandem facilities*. In the case of IXC or LEC tandem facilities, providers must, if technically possible, use real-time blocked calls to determine whether criteria for reporting an outage have been reached. Providers must report IXC and LEC tandem outages of at least 30 minutes duration in which at least 90,000 calls are blocked or at least 1,350 DS3-minutes are lost. The number of blocked calls is the sum of the number of blocked originating calls and the number of blocked terminating calls. Providers may use historical data for the appropriate time(s) of day to estimate blocked calls when required real-time blocked call counts are not possible. When using historical data, providers must report incidents where at least 30,000 originating and terminating calls are blocked during a period of at least 30 minutes duration. (DS3 minutes are defined in paragraph (d) of § 4.7.)

(d) *Satellite*. All satellite communications providers shall submit electronically an Initial Communications Outage Report to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that manifests itself as: a loss of complete accessibility to at least one satellite or transponder; a loss of a satellite communications link that potentially affects at least 900,000 user minutes of either telephony service or paging service; affecting at least 1,350 DS3 minutes; or potentially affecting any special offices and facilities (in accordance with paragraphs (a) through (d) of § 4.5). (DS3 minutes and user minutes are defined in paragraphs (d) and (e) of § 4.7.) Not later than thirty days after the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Initial and Final reports shall comply with all the requirements of § 4.11. Excluded from these outage-reporting requirements are satellite transponders used solely for intra-corporate or intra-organizational private telecommunications networks, and satellite transponders that are used solely for the one-way distribution of video or audio programming.

(e) *Signaling System 7*. Signaling System 7 (SS7) providers shall submit electronically an Initial Communications Outage Report to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize an outage of at least 30 minutes duration that manifests itself as the loss or blocking of at least 90,000 ISDN User Part (ISUP) messages. The number of lost or blocked messages may be based on call logs if available. Otherwise if call logs are not available, the number of lost or blocked messages may be estimated based on the normal message volumes during the applicable time(s) of day. Not later than thirty days after the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Initial and Final reports shall comply with all the requirements of § 4.11.

(f) *Wireline*. All wireline communications providers that operate transmission, routing, or switching facilities and provide interstate or international communications service shall submit electronically an Initial Communications Outage Report to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that: potentially affects at least 900,000 user minutes of either telephony or paging; affects at least 1,350 DS3 minutes; represents the loss of at least one satellite transponder; potentially affects any special offices and facilities (in accordance with paragraphs (a) through (d) of § 4.5); or (5) potentially affects a 911 special facility (as defined in (e) of § 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and the provider shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility. (DS3 minutes and user minutes are defined in paragraphs (d) and (e) of § 4.7.) Not later than thirty days after the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Initial and Final reports shall comply with all the requirements of § 4.11.

#### **§ 4.11 Initial and final communications outage reports that must be filed by communications providers.**

Initial and final communications outage reports shall be submitted by a person authorized by the communications provider to submit such reports to the Commission. The person submitting the Final report to the Commission shall also be authorized by the provider to legally bind the provider to the truth, completeness, and accuracy of the information contained in the report. Each Initial report shall be attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief. Each Final report shall be attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief and that the communications provider on oath deposes and states that this information is true, complete, and accurate. The Final report shall contain all pertinent information on the outage, including any information that was not contained in, or that has changed from that provided in, the Initial report.

#### **§ 4.13 Reports by the National Communications System (NCS) and by special offices and facilities, and related responsibilities of communications providers.**

Reports by the National Communications System (NCS) and by special offices and facilities (other than 911 special offices and facilities) of outages potentially affecting them (*see* paragraphs (a) through (d) of § 4.5) shall be made according to the following procedures:

(a) When there is a mission-affecting outage, the affected facility will report the outage to the NCS and call the communications provider in order to determine if the outage is expected to last 30 minutes. If the outage is not expected to, and does not, last 30 minutes, it will not be reported to the Commission. If it is expected to last 30 minutes or does last 30 minutes, the NCS, on the advice of the affected special facility, will either:

(1) Forward a report of the outage to the Commission, supplying the information for initial reports affecting special facilities specified in this section of the Commission's Rules;

(2) Forward a report of the outage to the Commission, designating the outage

as one affecting "special facilities," but reporting it at a level of detail that precludes identification of the particular facility involved; or

(3) Hold the report at the NCS due to the critical nature of the application.

(b) If there is to be a report to the Commission, an electronic, written, or oral report will be given by the NCS within 120 minutes of an outage to the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served at such other facility designated by the Commission by public notice or (at the time of the emergency) by public announcement only if there is a telephone outage or similar emergency in Washington, DC. If the report is oral, it is to be followed by an electronic or written report the next business day. Those providers whose service failures are in any way responsible for the outage must consult and cooperate in good faith with NCS upon its request for information.

(c) Additionally, if there is to be a report to the Commission, the communications provider will provide a written report to the NCS, supplying the information for final reports for special facilities required by this section of the Commission's rules. The communications provider's final report to the NCS will be filed within 28 days after the outage, allowing the NCS to then file the report with the Commission within 30 days after the outage. If the outage is reportable as described in paragraph (b) of this section, and the NCS determines that the final report can be presented to the Commission without jeopardizing matters of national security or emergency preparedness, the NCS will forward the report as provided in either paragraphs (a)(1) or (a)(2) of this section.

#### **PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS**

5. The authority citation for part 63 continues to read as follows:

**Authority:** Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403, and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201–205, 214, 218, 403, and 571, unless otherwise noted.

6. Section 63.100 is revised to read as follows:

#### **§ 63.100 Notification of service outage.**

The requirements for communications providers concerning communications disruptions and the filing of outage reports are set forth in part 4 of this chapter.

[FR Doc. 04–6618 Filed 3–25–04; 8:45 am]

BILLING CODE 6712–01–P

#### **OFFICE OF PERSONNEL MANAGEMENT**

#### **48 CFR Parts 1631 and 1699**

RIN 3206–AJ10

#### **Federal Employees Health Benefits Program; Revision of Contract Cost Principles and Procedures, and Miscellaneous Changes, Parts 1631 and 1699**

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a proposed regulation amending the Federal Employees Health Benefits (FEHB) Acquisition Regulation (FEHBAR). This regulation includes additional contract cost principles and procedures for FEHB Program experience-rated contracts and is intended to clarify our requirements and enhance our oversight of FEHB carriers.

**DATES:** Comments must be received on or before May 25, 2004.

**ADDRESSES:** Send or deliver comments to Abby L. Block, Deputy Associate Director, Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 3400, 1900 E Street NW., Washington, DC; 20415–3601, or by fax: (202) 606–0633, or e-mail to: [aseaston@opm.gov](mailto:aseaston@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Anne Easton, Senior Policy Analyst (202) 606–0004.

**SUPPLEMENTARY INFORMATION:** We are enhancing our oversight of experience-rated FEHB contracts by requiring carriers to apply additional cost principles and procedures. We currently contract with thirty-two experience-rated fee-for-service carriers and Health Maintenance Organizations (HMOs).

Under the FEHB law, 5 U.S.C. 8902, it is part of OPM's responsibility to ensure that rates charged by health benefits plans reasonably and equitably reflect the cost of the benefits provided. Our interest, from a financial standpoint, is to pay a reasonable price for the health care coverage we purchase