

§ 440.250 Limits on comparability of services.

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(u) If the agency elects to cover individuals infected with tuberculosis as specified in §§ 435.219 and 436.219 of this subchapter, medical assistance to those individuals is limited to TB-related services described in § 440.164.

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(Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Programs)

Dated: September 1, 1998.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing Administration.

Dated: April 28, 1999.

Donna E. Shalala,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 15, 22, 24, 25, 26, 27, 90, 95, 100, and 101

[WT Docket No. 99-266, FCC 99-205]

Extending Wireless Telecommunications Services to Tribal Lands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on potential terrestrial wireless and satellite policy initiatives to address the telecommunications needs of Indians living on tribal lands. The Commission has been instructed to help ensure that all Americans have access to affordable telecommunications services. Consistent with that mandate, the Commission seeks to secure for consumers living on tribal lands the same opportunities to take advantage of telecommunications capabilities that other Americans have. In addition, the Commission seeks comment on whether to extend these initiatives to consumers in other unserved areas.

DATES: Comments are due November 9, 1999, and reply comments are due December 9, 1999.

ADDRESSES: Federal Communications Commission, Secretary, 445 Twelfth Street, SW, Room TW-A325, Washington, DC 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. See the **SUPPLEMENTARY INFORMATION**

section for additional information about paper and electronic filing.

FOR FURTHER INFORMATION CONTACT: Joel Taubenblatt, Wireless Telecommunications Bureau, at (202) 418-1513.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 96-266, adopted August 5, 1999 and released August 18, 1999. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the Commission's Reference Center, room CY-A257, 445 12th Street SW, Washington, DC. This *NPRM* is also available through the Internet at <http://www.fcc.gov/Bureaus/Wireless/Notices/1999/fcc99205.pdf>. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.) at 1231 20th Street NW, Washington, DC 10036, (202) 857-3800.

I. Introduction

1. The Telecommunications Act of 1996 has instructed the Commission to help ensure that all Americans have access to affordable telecommunications services. Consistent with that mandate, the Commission seeks comment on the potential of terrestrial and satellite wireless technologies to provide basic telephone service on tribal lands and other unserved areas, particularly in remote areas where wireline alternatives would be significantly more expensive. The Commission also seeks comment on possible changes to our rules for terrestrial wireless and satellite services that would provide greater incentives for terrestrial wireless and satellite carriers to extend service to tribal lands and other unserved areas.

2. In conjunction with this *NPRM*, the Commission adopted a companion Further Notice of Proposed Rulemaking in CC Docket No. 96-45, FCC 99-204 (to be published at a later date in the **Federal Register**) in which the Commission proposes initiatives to encourage the extension of wireline service to tribal lands and other unserved areas and to expand subsidies for all telecommunications carriers—whether wireline, terrestrial wireless, or satellite—that serve such areas.

II. Background

3. Commission representatives have met with many tribal leaders and other representatives of Indian communities to obtain their insights into the problem of low telecommunications penetration on tribal lands. Earlier this year, the Commission held two public hearings at

which federal and state officials, tribal officials, consumer advocates, and telecommunications service providers addressed issues such as the costs of delivering services to remote areas having very low population densities, the impact of the size of local calling areas on the affordability of service, the quality of telephone service on tribal lands, the complexities of governmental jurisdiction and sovereignty issues, and the effects of low incomes and high unemployment on tribal lands on telephone service.

4. Because many tribal lands, particularly those in the western United States, are geographically isolated, obtaining the lowest cost for providing basic telephone service to the population on the tribal land may often require use of a terrestrial wireless technology, a satellite technology, or a combination of these technologies. Terrestrial wireless technology includes both mobile services, such as cellular and Personal Communications Service (PCS), and fixed "wireless local loop" services (WLL). A hybrid terrestrial/satellite wireless model would involve a satellite providing the communications link between an isolated community and the nation's public switched telephone network for long distance telephony, with a terrestrial wireless loop used to link the individual residents and businesses in a particular community for local telephony. Alternatively, satellites can be used alone for long distance and local telephony through the use of handheld phones that can communicate directly with the satellites.

III. Discussion

5. Accordingly, this *NPRM* seeks comment on whether certain changes to the Commission's rules for terrestrial wireless and satellite services would provide greater incentives for existing carriers to extend these services to tribal lands and other unserved areas. Possible rule changes include: (a) Relaxing power and antenna height limits for wireless services to reduce the number of transmitting facilities required to provide service to a tribal land/unserved area, and thus reduce the cost of providing service to that tribal land/unserved area, without creating a significant risk of interference among wireless systems; (b) creating incentives in our buildout requirements to encourage buildout on tribal lands and other unserved areas (e.g., for services subject to a specific population/geographic coverage requirement, apply a multiplier to the population or land area of a tribal land/unserved area for purposes of meeting the requirement);

(c) under certain conditions, allowing licensees to expand their coverage into adjacent licensing areas in order to provide full coverage to a tribal land, provided that the adjacent licensee has had a reasonable opportunity to extend coverage itself and has not done so, and provided that such coverage does not cause interference to the adjacent licensee's actual operations; (d) modifying restrictions on commercial use of spectrum by certain categories of non-commercial radio licensees in cases where such licensees wish to provide service to tribal lands or other unserved areas; (e) relaxing restrictions on the transfer of "designated entity" licenses to non-designated entities where the non-designated entity commits to provide service to a tribal land or other unserved area; and (f) adopting policies that encourage the use of satellite technology (or combined satellite-wireless technology) to provide service on tribal lands or other unserved areas, where such service would be technologically efficient. The NPRM also seeks comment on whether the grant of additional flexibility to wireless licensees should be conditioned on the existence of a binding agreement between the licensee and relevant tribal authority.

6. In addition to inquiring about incentives for existing terrestrial wireless and satellite carriers to extend service to tribal lands/unserved areas, the NPRM seeks comment on the following ways to encourage service to tribal lands/unserved areas in the Commission's development and licensing of new services: (a) Identifying frequency bands that are not currently allocated for telecommunications service that could potentially be used to provide basic telephone service on tribal lands/unserved areas; (b) allowing "drop-in" licensing of unused channels in otherwise allocated and licensed spectrum to provide service to tribal lands/unserved areas; (c) in new services, establishing licensing area boundaries that will not splinter tribal lands among multiple licensees; (d) adopting technical and operational rules that encourage development of low-cost technology in new services suitable for providing service in sparsely populated areas such as tribal lands; (e) in future auctions, awarding bidding credits to auction winners (regardless of designated entity status) who commit to provide service to tribal lands/unserved areas in their markets; and (f) using licensing authority to encourage the use of satellite technology to serve tribal lands/unserved areas.

IV. Procedural Matters

A. *Ex Parte Rules—Permit-But-Disclose Proceeding*

7. This proceeding is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206.

B. *Initial Regulatory Flexibility Analysis*

8. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible impact on small entities of the proposals suggested in this NPRM. The IRFA is set forth in the section V. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the NPRM, as set forth in the "DATES" section and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, see 5 U.S.C. 603(a).

C. *Initial Paperwork Reduction Act of 1995 Analysis*

9. This NPRM contains neither a new nor a modified information collection.

D. *Comment Dates*

10. Pursuant to §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, comments are due November 9, 1999, and reply comments are due December 9, 1999. 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).

11. 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, 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, 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.

12. Parties who choose to file by paper must file an original and four copies of each filing. If participants would like each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. 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 filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Room TW-A325, Washington, DC 20554.

13. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, The Portals, 445 Twelfth Street, S.W., Room CY-A257, Washington, DC 20554.

V. *Initial Regulatory Flexibility Analysis*

14. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of this Notice of Proposed Rulemaking, as set forth in section IV.D of the SUPPLEMENTARY INFORMATION, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

of the Small Business Administration, in accordance with the RFA.²

A. Need for and Objectives of the Proposed Rules

15. We are issuing this Notice of Proposed Rulemaking to seek comment on potential terrestrial wireless and satellite policy initiatives to address the telecommunications needs of consumers living on tribal lands. As stated, the Telecommunications Act of 1996 instructed the Commission to help ensure that all Americans have access to affordable telecommunications services. Consistent with that mandate, we seek to secure for consumers living on tribal lands the same opportunities to take advantage of telecommunications capabilities that other Americans have. In addition, we seek comment on whether to extend these initiatives to consumers in other unserved areas.

16. Specifically, this Notice of Proposed Rulemaking seeks comment on the following potential initiatives for encouraging existing wireless licensees to provide telecommunications service to tribal lands and other unserved areas: (a) Relaxing antenna height and transmitter power limitations applicable to service providers in tribal lands and other unserved areas; (b) establishing flexible buildout requirements for carriers providing telephone service to tribal lands and other unserved areas; (c) permitting licensees to expand coverage into adjacent licensing areas in order to provide full coverage to tribal lands and other unserved areas; (d) allowing licensees in certain private (non-CMRS) services to provide basic telephone service to tribal lands and other unserved areas; (e) lifting restrictions on transfer of wireless licenses awarded to designated entities (DEs) for carriers providing service to tribal lands and other unserved areas; (f) modifying regulations to promote the deployment of satellite technology to tribal lands and other unserved areas; and (g) granting of additional flexibility to carriers providing service to tribal lands and other unserved areas based on the existence of a binding agreement between the carrier and the affected tribe.

17. In addition, this Notice of Proposed Rulemaking seeks comment on the following ways to encourage service to tribal lands/unserved areas in the Commission's development and licensing of new services: (a) Identifying frequency bands that are not currently allocated for telecommunications service that could potentially be used to provide basic telephone service on tribal

lands/unserved areas; (b) allowing "drop-in" licensing of unassigned or unused channels in otherwise allocated and licensed spectrum to provide service to tribal lands/unserved areas; (c) establishing licensing area boundaries for new services that will not splinter tribal lands among multiple licensees; (d) adopting technical and operational rules that encourage development of low-cost technology in new services suitable for providing service in sparsely populated areas such as tribal lands; (e) in future auctions, awarding bidding credits to auction winners (regardless of designated entity status) who commit to provide service to tribal lands/unserved areas in their markets; and (f) using our licensing authority to encourage the provision of satellite-based telecommunication services to tribal lands and other unserved areas.

B. Legal Basis

18. The potential actions on which comment is sought in this Notice of Proposed Rulemaking would be authorized under sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

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

19. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵ A small business concern is one that: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).⁶ A small organization is generally "any not-for-

profit enterprise which is independently owned and operated and is not dominant in its field."⁷ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁸ And finally, "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."⁹ As of 1992, there were approximately 85,006 such jurisdictions in the United States.¹⁰ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.¹¹ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

20. We further describe and estimate the number of small business concerns that may be affected by the proposed rules, if adopted, including wireless and satellite service providers. To assist the Commission in analyzing the total number of potentially affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from this Notice of Proposed Rulemaking.

i. Wireless (Radiotelephone) Providers

21. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.¹² According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.¹³ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain

⁷ 5 U.S.C. 601(4).

⁸ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁹ 5 U.S.C. 601(5).

¹⁰ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

¹¹ *Id.*

¹² United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) ("1992 Census").

¹³ 13 CFR 121.201, SIC Code 4812.

³ 5 U.S.C. 603(b)(3).

⁴ *Id.* at 601(6).

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

⁶ Small Business Act, 15 U.S.C. 632.

² See 5 U.S.C. 603(a).

that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the policies and rules proposed in this Notice of Proposed Rulemaking. We next attempt to refine further this estimate to correspond with the categories of wireless (radiotelephone) companies that are commonly used under our rules.

22. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the policies and rules proposed herein, if adopted, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules—which, for both categories, is for radiotelephone (wireless) companies.¹⁴ To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions. According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services.¹⁵ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless

Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the policies and rules proposed in this Notice of Proposed Rulemaking.

23. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁶ 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.¹⁷ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA.¹⁸ No small businesses within the SBA-approved definition 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% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

24. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA,¹⁹ and

approval for the 900 MHz SMR definition has been sought. The proposed rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do 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 less than \$15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the policies and rules proposed in this Notice of Proposed Rulemaking.

25. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the policies and rules proposed in this Notice of Proposed Rulemaking includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the policies and rules proposed in this Notice of Proposed Rulemaking.

26. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There

¹⁶ See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, 61 FR 33859 (July 1, 1996); FCC 96-278, WT Docket No. 96-59, ¶¶ 57-60 (June 24, 1996), see also 47 CFR 24.720(b).

¹⁷ *Id.*, at ¶ 60.

¹⁸ Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 59 FR 37566 (July 22, 1994), 9 FCC Rcd.5532, 5581-84 (1994).

¹⁹ See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands

Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, Second Order on Reconsideration and Seventh Report and Order, 60 FR 48913 (September 21, 1995), 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 61 FR 6212 (February 16, 1996), 11 FCC Rcd 1463 (1995).

¹⁴ *Id.*

¹⁵ FCC, Carrier Locator: Interstate Service Providers, Figure 1 (Jan. 1999) (Carrier Locator). See also 47 CFR 64.601 *et seq.* (TRS). The most reliable source of information regarding the numbers of commercial wireless entities appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS).

are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies.²⁰ According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 firms that operated during 1992 had 1,000 or more employees.²¹ Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

27. 220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.²² We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than three million dollars for the preceding three years.²³ An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.²⁴ 908 licenses were auctioned in three different-sized

geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.²⁵ A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses.²⁶ As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

28. Paging Licensees. On June 7, 1999, the Wireless Telecommunications Bureau announced the first in a series of auctions of paging licenses, the first to commence on December 7, 1999.²⁷ The Bureau has proposed that the first auction be composed of 2,499 licenses.²⁸ The Commission utilizes a two-tiered definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services.²⁹ A small business is defined as either (a) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (b) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. The SBA has approved this definition.³⁰ At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. In addition, according to the most recent *Carrier Locator* data, 137 carriers reported that they were engaged in the provision of either paging or messaging services,

which are placed together in the data.³¹ Because the auction has yet to occur, we do not have data specifying the number of winning bidders that will meet the above small business definition. Also, we will assume that there currently are 137 or fewer small businesses paging carriers.

29. Narrowband PCS Licensees. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

30. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.³² A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).³³ We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.³⁴ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

31. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.³⁵ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than

²⁰ 13 CFR 121.201, SIC Code 4812. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

²¹ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

²² Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by Private Land Mobile Radio Service, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, at paras. 291-295 (1997) (220 MHz Third Report and Order) 62 FR 15978 (April 3, 1997). The SBA has approved these definitions. See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

²³ 220 MHz Third Report and Order, 62 FR 15978 (April 3, 1997), 12 FCC Rcd at 11068-69, para. 291.

²⁴ See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

²⁵ Public Notice, "FCC Announces It Is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment Is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

²⁶ Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," Report No. AUC-99-24-E, DA No. 99-1287 (Wireless Telecom. Bur. July 1, 1999).

²⁷ Public Notice, "First Paging Service Spectrum Auction Scheduled for December 7, 1999," Report No. AUC-99-26-A, DA No. 99-1103, 64 FR 36009 (July 2, 1999), (Wireless Telecommunications Bureau, June 7, 1999).

²⁸ *Id.*

²⁹ See 47 CFR 20.9(a)(1) (noting that private paging services may be treated as common carriage services).

³⁰ See Letter from A. Alvarez, Administrator, SBA, to A.J. Zoslov, Chief, Auctions Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998).

³¹ Carrier Locator at Fig. 1.

³² The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

³³ BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757, 22.759.

³⁴ 13 CFR 121.201, SIC Code 4812.

³⁵ The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

1,500 persons.³⁶ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

32. *Private Land Mobile Radio (PLMR)*. PLMR systems, also known as Private Mobile Radio Service (PMRS) systems, serve an essential role in a range of industrial, business, land transportation, and public safety activities.³⁷ These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses, if any, that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs³⁸ indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact any small U.S. business that chooses to become licensed in this service. On July 21, 1999, the Wireless Telecommunications Bureau requested public comment on whether the licensing of PMRS frequencies in the 800 MHz band for commercial SMR use would serve the public interest.³⁹

33. *Fixed Microwave Services*. Microwave services include common carrier,⁴⁰ private-operational fixed⁴¹

and broadcast auxiliary radio services.⁴² At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.⁴³ We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

34. *Offshore Radiotelephone Service*. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.⁴⁴ At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

35. *Wireless Communications Services*. This service can be used for fixed, mobile, radio, location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules proposed in the Further Notice includes these eight entities.

36. *Multipoint Distribution Systems (MDS)*. The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates,

has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.⁴⁵ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁴⁶ The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.⁴⁷

37. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts.⁴⁸ This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators who did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules proposed in the Further Notice.

ii. Satellite Providers

38. *International Service Providers*. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11 million or less in annual receipts.⁴⁹ According to the Census Bureau, there were a total of 848 Communications Services NEC in operation in 1992, and a total of 775 had annual receipts of less than \$9.999

³⁶ 13 CFR 121.201, SIC Code 4812.

³⁷ See 47 CFR 20.9(a)(2) (noting that certain Industrial/Business Pool service may be treated as common carriage service).

³⁸ Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

³⁹ Public Notice, "Wireless Telecommunications Bureau Incorporates Nextel Communications, Inc. Waiver Record into WT Docket No. 99-87: Seeks Comment on Licensing of PMRS Channels in the 800 MHz Band for Use in Commercial SMR Systems," DA 99-1431 (Wireless Telecom. Bureau July 21, 1999).

⁴⁰ 47 CFR 101 *et seq.* (formerly, Part 21 of the Commission's rules).

⁴¹ Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁴² Auxiliary Microwave Service is governed by Part 74 of the Commission's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁴³ 13 CFR 121.201, SIC Code 4812.

⁴⁴ This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 CFR 22.1001-22.1037.

⁴⁵ 47 CFR 21.961(b)(1).

⁴⁶ See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 60 FR 36524 (July 17, 1999), 10 FCC Rcd 9589 (1995).

⁴⁷ One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

⁴⁸ 13 CFR 121.201.

⁴⁹ 13 CFR 120.121, SIC 4899.

million.⁵⁰ We note that those entities providing only international service will not be affected by our proposed rules, if adopted. We do not, however, have sufficient data to estimate with greater detail those entities providing both international and domestic services or only domestic service. Consequently, we estimate that there are fewer than 775 small international service entities potentially impacted by our rules.

39. *Fixed Satellite Transmit/Receive Earth Stations.* Based on actual payments from FY 1998, there are approximately 3,100 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations.⁵¹ We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

40. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are 3,100 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations.⁵² We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

41. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications.⁵³ We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

42. *Mobile Satellite Earth Stations.* There are 11 licensees.⁵⁴ We do not request or collect annual revenue information, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

43. *Radio Determination Satellite Earth Stations.* There are four

licensees.⁵⁵ We do not request nor collect annual revenue information, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

44. *Space Stations (Geostationary).* Commission records show that there are 43 Geostationary Space Station licensees.⁵⁶ We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

45. *Space Stations (Non-Geostationary).* There are 12 Non-Geostationary Space Station licensees, of which only two systems are operational.⁵⁷ We do not request nor collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

46. This Notice of Proposed Rulemaking proposes no additional reporting or recordkeeping measures. The Notice of Proposed Rulemaking does seek comment on whether the Commission should permit additional flexibility in its rules to create incentives for the extension of wireless or satellite service to tribal lands or other unserved areas. For example, in section III.A.1 of the Notice of Proposed Rulemaking, we seek comment on whether to relax antenna height and transmitter power limits for providers that commit to serving tribal lands or other unserved areas. In section III.A.2 of the Notice of Proposed Rulemaking, we seek comment on whether to liberalize our buildout rules for providers that commit to serve a tribal land or other unserved area. In section III.A.7 of the Notice of Proposed Rulemaking, we state that to the extent that we grant additional flexibility to providers, we believe it is important to ensure that providers actually provide service to tribal lands or other unserved areas in exchange for such flexibility. We therefore seek comment in that section on whether the grant of additional flexibility to wireless or satellite licensees should be conditioned on the existence of a binding agreement between the licensee and relevant tribal authority in the case of tribal lands, or a binding agreement between the

licensee and another authority in the case of other unserved areas. To the extent that licensees choose to take advantage of any additional flexibility that we adopt, they may be required to comply with requirements to prove the existence of such binding agreements.

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

47. As described in Section II of the Notice of Proposed Rulemaking, the Commission held two public hearings earlier this year at which federal and state officials, tribal officials, and telecommunications services providers addressed issues such as the costs of delivering services to remote areas having very low population densities, the impact of the size of local calling areas on the affordability of service, the quality of telephone service on tribal lands, the complexities of governmental jurisdiction and sovereignty issues, and the effects of low incomes and high unemployment on tribal lands on telephone service. Following up on the record developed in those hearings, we have decided to seek comment in this Notice of Proposed Rulemaking on specific potential initiatives that the Commission could adopt to facilitate the provision of telecommunications service to tribal lands and other unserved areas using wireless or satellite technologies.

48. For example, in section III.B.1 of the Notice of Proposed Rulemaking, we seek comment on whether there are unallocated or unlicensed spectrum bands that could be used by telecommunications providers, including small entities, to serve the needs of tribal lands and other unserved areas. In section III.B of the Notice of Proposed Rulemaking, we seek comment on whether there are unused channels in otherwise allocated and licensed spectrum that could be used by telecommunications providers, including small entities, to provide telephone service to tribal lands and other unserved areas. In section III.A.5 of the Notice of Proposed Rulemaking, we seek comment on whether the Commission should modify its restrictions on the transfer of spectrum from "designated entities" (DEs) (entrepreneurs and small businesses) to non-DEs in order to facilitate the provision of telecommunications service to tribal lands or other unserved areas. We believe that at this juncture it is necessary to seek comment on the various alternatives set forth in this Notice of Proposed Rulemaking, including the three listed as examples, for encouraging the provision of telecommunications service to tribal

⁵⁰ United States Dept. of Commerce, Bureau of Census, 1992 Economic Census Industry and Enterprise Receipts Size Report, at Table 2D.

⁵¹ See Assessment and Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, FCC 99-146, 64 FR 35831 (July 1, 1999) at Attachment A (released June 18, 1999).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

lands and other unserved areas. We encourage commenters to discuss any other alternatives that would minimize any significant economic impact on small entities.

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

49. None.

List of Subjects

47 CFR Part 1

Communications common carriers, Radio, Telecommunications.

47 CFR Parts 15, 95, and 101

Communications equipment, Radio.

47 CFR Part 22

Communications common carriers, Communications equipment, Radio, Rural areas.

47 CFR Part 24

Personal communications services, Radio.

47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Satellites.

47 CFR Part 26

Communications common carriers, Radio.

47 CFR Part 27

Wireless communications service, Radio.

47 CFR Part 90

Common carriers, Communications equipment, Radio.

47 CFR Part 100

Communications equipment, Radio, Satellites.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-23575 Filed 9-9-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99-1712, MM Docket No. 99-275, RM-9704]

Radio Broadcasting Services; Keno, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Renaissance Community Improvement Association, Inc., seeking the allotment of Channel 235A to Keno, OR, as the community's second local aural service. The Commission also proposes to allow petitioner to amend its pending application (BPED-950206MB) to specify Channel 235A without loss of cut-off protection in order to resolve the mutual exclusivity with the pending application of St. Michael's Catholic Radio (BPED-950206MH). Channel 235A can be allotted to Keno in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 42-07-30 WL; 121-55-42 NL.

DATES: Comments must be filed on or before October 18, 1999, and reply comments on or before November 2, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Rev. Sandra Soho, President, Renaissance Community Improvement Association, Inc., P.O. Box 111, Klamath Falls, OR 97601-0006 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-275, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99-23461 Filed 9-9-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket NHTSA-99-5992, Notice 1]

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards Rear Impact Guards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: Federal Motor Vehicle Safety Standard (FMVSS) No. 223 specifies a test procedure for demonstrating that rear impact guards comply with the strength and energy absorption requirements of the standard. This procedure involves a quasi-static test in which the horizontal member of the rear impact guard is slowly pushed for 125 mm, while the amount of resistance it offers is measured. Next, the guard is released and the amount of energy the guard absorbed is calculated.

The Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking requesting three changes to the test procedure. First, TTMA requested that we eliminate the lower bound of the range of acceptable rates of force application, so that the force can be applied in discrete start-stop steps. Second, TTMA requested that the requirement to displace the guard by a full 125 mm be eliminated if it appeared that the guard had met all requirements before that point. Third, TTMA suggested that the elastic rebound from guards that rebound very slowly following removal of the force not be subtracted from the calculated energy absorption. Each of the proposed revisions purports to ease the burden of testing on rear impact guard manufacturers, especially small businesses.

We are denying the petition. TTMA has not demonstrated a need for slower rates of force application. We have already lowered the permissible rate of force application to a level that is not