

Dated: September 30, 1999.

Thomas Voltaggio,

Acting Regional Administrator, EPA Region III.

[FR Doc. 99-26852 Filed 11-2-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 68

[FRL-6466-5]

Approval and Promulgation of State Program Delegation; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the State of Ohio's request for delegation of the Accidental Release Prevention Program under section 112(r)(7) of the Clean Air Act.

In the final rules section of this **Federal Register**, EPA is approving the State's request for delegation as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless EPA receives relevant adverse written comment. Should EPA receive such comment, we will publish a timely withdrawal informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document, and no further action will be taken.

EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. **DATES:** Written comments must be received on or before December 3, 1999. **ADDRESSES:** Written comments may be mailed to Mark J. Horwitz, Chief, Office of Chemical Emergency Preparedness and Prevention, Superfund Division (SC-6J), Region 5, at the address listed below.

Copies of the materials submitted by the Ohio Environmental Protection Agency may be examined during normal business hours at the following location: Office of Chemical Emergency Preparedness and Prevention, Superfund Division (SC-6J), U.S. Environmental Protection Agency, 77

West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Bob Mayhugh, Environmental Protection Specialist, Office of Chemical Emergency Preparedness and Prevention, Superfund Division(SC-6J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, 312-886-5929.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: October 21, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99-28312 Filed 11-2-99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, and 43

[CC Docket No. 99-301, FCC 99-283]

Local Competition and Broadband Reporting

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission proposes to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband. The Commission seeks comment on all aspects of the proposal, including how it can best structure such a program to satisfy its needs without overburdening those entities that would be required to file.

DATES: Comments are due on or before December 3, 1999. Reply comments are due on or before December 20, 1999.

Written comments by the public on the proposed information collections are due on or before December 3, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 3, 2000.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, with a copy to Ms. Terry Conway of the Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW, 6A-100, Washington, DC

20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20037. Parties may file electronically through the Internet at <<http://www.fcc.gov/e-file/ecfs.html>>. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW, Washington, DC 20503 or via the Internet to VHuth@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Ellen Burton, Industry Analysis Division, Common Carrier Bureau, at (202) 418-0958, or Thomas Beers, Deputy Chief of the Industry Analysis Division, Common Carrier Bureau, at (202) 418-0952. For additional information concerning the information collections contained in the Notice of Proposed Rulemaking (NPRM) contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) released October 22, 1999 (FCC 99-283). The full text of the NPRM 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 also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857-3800, 1231 20th Street, NW, Washington, DC 20037. Additionally, the complete item is available on the Commission's website at <http://www.fcc.gov/Bureaus/Common_Carrier/Notices/1999/>.

Paperwork Reduction Act

The NPRM summarized here contains either a proposed or modified information collection. 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 contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on the NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. 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.
OMB Approval Number: 3060-0816.
Title: "Local Competition and Broadband Reporting, CC Docket No. 99-301."

Form Number: FCC Form 477.
Type of Review: Revision of Existing Collection.
Respondents: Business or Not-for-profit institutions, including small businesses.
Burden Estimate:

	Number of respondents	Estimated time per response	Total annual burden
(1) Local Competition and Broadband Reporting:			
(a) Entities completing entire data collection except section VI	Up to 75	120-576	Up to 19,144.
(b) Entities completing only section VI	Up to 70	32-236	Up to 4,792.

Total Annual Burden: Up to 23,936 person-hours.

Estimated Costs per Respondent: \$0.00.

Needs and Uses: The information collection for which approval is sought would be used by the Commission to gather information on the state of the development of local competition and broadband deployment. Without such information, the Commission faces significant difficulty in assessing the development of these markets and, therefore, is less able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Summary of the Notice of Proposed Rulemaking

1. In the NPRM summarized here, we propose to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband. We tentatively conclude that we need timely and reliable information about the pace and extent of developing local competition in different geographic areas in order to evaluate the effectiveness of actions that this Commission and the states are taking to promote local competition. We also tentatively conclude that we need timely and reliable information to assess the deployment of broadband services, as required by section 706 of the Telecommunications Act of 1996.

2. Moreover, we tentatively conclude that this information would allow us to avoid "one size fits all" regulation, and, specifically, to reduce regulation wherever we can pursuant to new sections 10 and 11 of the Act. 47 U.S.C. 160, 161. The Commission proposes a simple filing that should enable it to make better informed decisions, while placing as low a burden as possible on reporting entities. A proposed data collection form is attached to the NPRM

as Attachment A. Currently, the Commission does not gather data of the type requested under this proposed program.

3. Throughout the NPRM, we seek comment on all of the tentative conclusions we reach. We also encourage commenters to propose alternative means of collecting the needed information. The following text represents a brief summary of issues set out for discussion and comment in the NPRM.

4. *Types of Entities that Must Report:* In the NPRM, we discuss the types of entities that should be required to report data describing the extent and intensity of local competition and the extent of broadband services deployment. Based on our determination that we need comprehensive data about developing local services competition, we tentatively conclude that large and medium incumbent local exchange carriers (LECs)—as well as their wireline and fixed wireless telephony competitors, and also their mobile wireless telephony potential competitors—should complete sections I-III of the survey if the reporting entity is a wireline or fixed wireless LEC and section VI if the entity is a mobile wireless telephony carrier. Consistent with our need for comprehensive local competition information, we tentatively conclude that the obligation to complete the survey should not depend on the type of technology that an incumbent LEC or competitive LEC uses to provide local service. We tentatively conclude that we should require carriers with 50,000 or more local access lines or channels (of any capacity) nationwide, or 50,000 or more subscribers nationwide to file information pursuant to this program. Further, we propose to collect information about certain mobile wireless services because of their potential to become substitutes for wireline service. Thus, we propose to require any carrier who provides mobile

telephony (defined here as, real time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoffs of subscriber calls) to report if such an entity has more than 50,000 subscribers nationwide. We note that providers of mobile telephony services may include facilities-based providers of cellular, broadband personal communications service (PCS), specialized mobile radio services (SMR), as well as providers using satellite technology. We ask commenters to address whether the 50,000 nationwide access line/subscribers threshold that we propose is sufficient to provide the information that the Commission needs, while not burdening smaller entities.

5. We next turn to a consideration of those entities that should report data on deployment of broadband services. The Notice tentatively concludes that given our broad statutory mandate under section 706 of the Telecommunications Act of 1996, to evaluate the deployment of broadband services, regardless of the transmission media or technology employed, the survey should include questions about the deployment of what we term "full broadband" services. For purposes of the proposed data collection, "full broadband" service is defined, consistent with the *Advanced Telecommunications Report*, as having an information carrying capacity of over 200 Kilobits per second (Kbps) in each direction, simultaneously. *An Inquiry Concerning the Deployment of Advanced Telecommunications Capabilities to All Americans in a Reasonable and Timely Fashion*, 14 FCC 2d 2398, paragraphs 20-25 (*Advanced Telecommunications Report*). The Notice recognizes, however, that entities may provide services with bandwidth that exceeds voice grade (i.e. 48 Kbps) but is less than 200 Kbps, and seeks

comment on the extent to which the Commission should consider services deployed in this range of bandwidth in assessing the progress of broadband deployment. Actual or potential providers of broadband services may include: LECs (incumbent and competitive, both resale and facilities-based, regardless of the technology used), cable television companies, utilities, MMDS/MDS/"wireless cable" carriers, mobile wireless carriers (both terrestrial and satellite-based), fixed wireless providers, and others. We believe that only by casting our net wide enough to include all such entities can we discern progress, or the lack of it, in meeting the goals stated in the *Advanced Telecommunications Report*. We also tentatively conclude, that any entity that provides at least 1,000 full broadband service lines (or wireless channels), or has at least 1,000 full broadband subscribers, should be required to complete all relevant parts of the survey, regardless of whether that entity meets the criterion for reporting local competition data (i.e., at least 50,000 nationwide local access lines or telephony subscribers). Therefore, it is possible, for example, that a LEC with fewer than 50,000 local access lines in service could have 1,000 or more full broadband lines in service, in which case that LEC would complete both the sections of the survey related to broadband services and the sections concerning local competition.

6. *Frequency of Reports*: We also ask commenters to address the frequency with which the Commission should gather the information sought by this proposed program. The majority of commenters to our *Local Competition Public Notice* proceeding concluded that for the program to be effective, the information should be collected quarterly. *Public Notice*, 63 FR 29409, CC Docket No. 91-141, DA 98-839, 13 FCC Rcd 9279 (May 28, 1998). We ask for comment on whether quarterly, semi-annual or annual reporting would best serve the goals of this information collection program.

7. *Exempting Smaller Entities*: We want to explore whether we can totally exempt some carriers from reporting without materially affecting our ability to effectively assess the development of local competition. Thus, we again ask commenters to address the desirability of the proposed threshold levels for local competition and broadband reporting. With regard to cable companies providing local exchange telephony, we seek comment on how best to measure the threshold for complying with our proposed reporting requirement.

8. With respect to broadband, we tentatively conclude that we should establish a more comprehensive reporting requirement for providers of broadband services. We promised in the *Advanced Telecommunications Report* to keep a close watch on deployment of broadband services to rural and other insular groups. Thus, to ensure that we do not miss broadband deployment by smaller entities, we seek comment on whether our threshold of 1,000 customers will allow us to accurately gauge its deployment, particularly to rural America.

9. Finally, we seek comment on whether, to reduce reporting burdens even further, we should allow an incumbent LEC of any size to file a brief letter in lieu of reporting local competition and broadband deployment data for states where that incumbent faces no local service competition and if it provides a *de minimis* number of broadband lines. We tentatively conclude that such an approach would reduce reporting burdens imposed on carriers without compromising our ability to get necessary information.

10. *Definition of Reporting Area*: To minimize the burden the reporting requirement places on reporting entities, we tentatively conclude that information should be reported by state. The Commission recognizes that collecting information about competitive activity and broadband services deployment in smaller geographic areas might yield sharper pictures of the extent and intensity of these developments. At the same time, we recognize that companies may regard such information as confidential, and we seek comment on whether a requirement that they disclose such information is appropriate to the extent such confidentiality concerns exist. Therefore, we seek comment on whether a level more narrowly defined than state level would be appropriate.

11. *Confidentiality of Data*: We think it extremely important that all local competition and broadband information collected pursuant to the proposed survey be made available to the public. Public availability will assist Commission staff in interpreting and utilizing such data, and it will facilitate Commission publication of data and analysis in Commission reports. Notwithstanding our belief that submitted information will not ordinarily raise legitimate protection issues, we cannot prevent parties submitting data from asserting confidentiality or other claims and seeking protection from public release. We, of course, expect such parties to follow Commission rules and guidelines

when seeking protection pursuant, primarily, to relevant sections of the Freedom of Information Act. We seek comment on our tentative conclusions regarding the confidentiality of the type of information to be gathered.

12. *Electronic Filing*: Because we seek to ensure that the filing requirement does not impose undue burdens on those entities that must complete the form and to allow the staff of the Commission to more efficiently analyze the data, we tentatively conclude that data should be submitted in spreadsheet form, utilizing Excel format.

Additionally, we propose that filers make their submissions to an e-mail address over the Internet. We ask commenters about the desirability of such an e-mail/spreadsheet-based electronic filing system, as well as other electronic filing systems.

13. *Survey Modification and Termination*: We expect the local services and broadband services markets will become increasingly dynamic as competition develops. Therefore, it may be necessary to make changes to the form, content, or reporting obligations of this information collection to ensure its continuing value, while minimizing filing burdens on respondents. Finally, to ensure that the program does not outlive its usefulness, we ask commenters whether it would be best to "sunset" this program, or perhaps to require a regular review process.

14. *Data to be Reported*: We describe and seek comment on, in the NPRM, the specific items set out in the proposed data collection form. A brief description of the proposed data collection form follows, with greater detail found in the complete NPRM.

15. Section I of the survey collects information about: (1) The number of voice grade and equivalent wireline or fixed wireless lines/channels in service that connect residential and, separately, non-residential end users to the public switched telephone network (for convenience, "voice grade lines"); and (2) the extent to which LECs use their own facilities, and the facilities or services of other LECs, in providing these lines.

16. Section II of the survey collects information about numbers of voice grade lines served from LEC switching centers, as defined in Attachment A of the NPRM, in which local service competitors have operational collocation arrangements.

17. Section III of the survey collects information from LECs about the number of high capacity lines or channels in service connecting end users to the public switched network (for convenience, "high-capacity lines").

High capacity lines are defined as lines with information carrying capacity capability to the customer's premises in excess of 200 Kbps in at least one direction, and at least 48 Kbps (*i.e.*, voice grade) in the other direction.

18. Providers of mobile telephony services (including mobile telephony affiliates of LECs) would not report data in sections I, II or III, but would instead report data on number of subscribers to voice grade mobile telephony service in section VI.

19. Sections IV and V of the survey collect information about the number of broadband lines in service to consumers. This includes information about both "full broadband" lines, with information carrying capacity in excess of 200 Kbps in both directions, simultaneously, and asymmetric "one way broadband" lines, with information carrying capacity in excess of 200 Kbps in one direction but not both. Section IV collects information about broadband lines in service to all customers, and section V collects information about broadband lines in service to residential customers. From the total and residential information, we will be able to derive information about broadband deployment to all other customers, such as business, government, and institutional customers.

20. The Notice seeks comment on whether answers to the survey questions are necessary and sufficient to describe and understand the state of local competition and deployment of broadband services in diverse areas of the nation.

Procedural Matters

A. Initial Paperwork Reduction Act of 1995 Analysis

21. The NPRM summarized here contains a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on the NPRM; OMB comments are due 60 days from the date of the publication of this summary of the NPRM in the **Federal Register**. 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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

B. Initial Regulatory Flexibility Act

22. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the NPRM. A copy of the IRFA is attached to this summary. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM and they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Office of Public Affairs, Reference Operations Division, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

23. This proceeding will be treated as a "permit-but-disclose" proceedings subject to the "permit-but-disclose" requirements under § 1.1206 of the Commission's rules, as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206.

C. Notice and Comment Provisions

24. *General.* 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 December 3, 1999, and reply comments on or before December 20, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

25. 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.

26. 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 appear 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, 445 12th St. SW, Washington, DC 20554, with a copy to: Ms. Terry Conway, Common Carrier Bureau, Industry Analysis Division, 445 12th St. SW, Room 6A-100, Washington, DC 20554. Written comments by the public on the proposed information collection are due on or before December 3, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before January 3, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW, Washington, DC 20503 or via the Internet to VHuth@omb.eop.gov.

27. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Ms. Terry Conway, Common Carrier Bureau, Industry Analysis Division, 445 12th St. SW, Room 6A-100, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (CC Docket No. 99-301), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service,

Inc., 1231 20th Street, NW, Washington, DC 20037.

Initial Regulatory Flexibility Act Analysis

28. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of any possible significant economic impact on small entities by the policies and rules proposed in the Notice. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice, which are set out in paragraph 91 of the Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

I. Need for, and Objectives of, the Proposed Action

29. The Commission has initiated this proceeding to determine whether it should require certain providers of communications services to report a limited amount of information about the development of local telephone competition and the deployment of broadband services as mandated by the Telecommunications Act of 1996. The 1996 Act—in particular, sections 251 and 271—tasked this Commission and the states with important roles in opening up local telephone markets to competition. The Commission needs timely and reliable information about the pace and extent of developing competition in different geographic markets in order to evaluate the effectiveness of the actions this Commission and the states are taking to promote local telephone competition. Moreover, the Commission tentatively concluded that gathering broadband deployment information is critical given that section 706 of the 1996 Act requires the Commission to issue periodic reports on the state of broadband deployment.

II. Legal Basis

30. The legal basis for the action as proposed for this rulemaking is contained in sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332 and 403, and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Action May Apply

31. The Commission tentatively concludes that local exchange carriers and providers of mobile telephony services that serve 50,000 or more subscribers, and any entity that provides at least 1,000 full broadband lines, should comply with the proposed reporting requirement. Based on data available to it at present, the Commission estimates that fewer than 50 of the nation's largest local exchange carriers and between 40 and 70 mobile telephony providers would be required to comply with the proposed requirement. Nevertheless, and out of an abundance of caution, we set out below a detailed description of the types of entities that could possibly be required to comply with the proposed reporting requirement and we detail our understanding of the number of small entities within each of these categories.

32. To estimate the number of small entities that may be affected by the proposed rules, we first consider the statutory definition of “small entity” under the RFA. The RFA generally defines “small entity” as having the same meaning as the term “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

33. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as 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). According to data in the most recent report, there are 3,604 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

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

35. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (“the Census Bureau”) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not “independently owned and operated.” For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules proposed in the Notice.

36. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321

such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain 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 wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules proposed in the Notice.

37. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition of small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,410 LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers. 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 these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers that may be affected by the decisions and rules proposed in the Notice.

38. *Wireless (Radiotelephone) Carriers.* 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. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. 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 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 decisions and rules proposed in the Notice.

39. *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 rules adopted herein, 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. We will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies, however, to the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. 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. 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 in paragraphs 40–52, 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 decisions and rules proposed in the Notice.

40. *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. For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. 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.

41. *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, 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 decisions and rules proposed in the Notice. 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 decisions and rules proposed in the Notice 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 decisions and rules proposed in the Notice.

42. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. 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, some of which may be affected by the decisions and rules proposed in the Notice.

43. 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. 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 \$3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 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 October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.

44. Paging. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business is defined as either (1) 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 (2) 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 approved this definition for paging services on December 12, 1999. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. 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. We do not have data specifying the number of these carriers that meet this two-tiered definition, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by

the decisions and rules proposed in the Notice.

45. Narrowband PCS. 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.

46. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. 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.

47. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. 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.

48. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. 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, if any, small businesses that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs 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 every small business in the United States. We note, however, that because the vast majority of these licensees are end-users, not providers of telephony or broadband services, they would not be directly affected by the rules proposed in this Notice.

49. *Fixed Microwave Services.*

Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. 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. 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.

50. *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. 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.

51. *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 Notice includes these eight entities.

52. *Satellite Services.* The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is generally 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 \$11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million. The Census report does not provide more precise data.

53. In addition to the estimates provided in paragraphs 40–52, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe in paragraphs 54–61 other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

54. *Cable Services or Systems:* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually. This definition 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 the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.

55. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were

1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

56. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 66,000,000 subscribers in the United States.

Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 66,000,000 subscribers, and we have based our fee revenue estimates on that figure.

57. *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. This definition of a small entity in the context of MDS auctions has been approved by the SBA. 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.

58. 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. This definition includes multipoint

distribution systems, and thus applies to MDS licensees and wireless cable operators which 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 Notice.

59. *Electric Services (SIC 4911)*: The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1379 electric utilities were in operation for at least one year at the end of 1992.

According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reports that 447 of the 1379 firms listed had total revenues below five million dollars.

60. *Electric and Other Services Combined (SIC 4931)*: The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars.

61. *Combination Utilities, Not Elsewhere Classified (SIC 4939)*: The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

IV. Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements

62. The very focus of this proceeding is whether the Commission should require certain providers of communications services to report a limited amount of information about the development of local telephone competition and the deployment of broadband services. The Notice tentatively concludes that the

Commission should undertake such a data collection and that local exchange carriers and providers of mobile telephony services that serve 50,000 or more subscribers, and any entity that provides at least 1,000 full broadband lines, should report specifically targeted information. The Notice sets out in detail, and seeks comment on, the Commission's tentative conclusions about the types of carriers that should report, exempting smaller carriers, frequency of reports, data to be reported, and methods (such as electronic filing) of reporting. In particular, the Commission has tentatively concluded that given the comprehensive data to be obtained from large and medium-size carriers, it can exempt most small carriers from completing the survey without materially affecting its ability to assess the development of local competition and the deployment of broadband services.

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

63. The Commission makes specific provision to exempt most smaller carriers from the proposed requirement to report local telephone competition data. The Commission tentatively concludes that carriers with fewer than 50,000 nationwide local access lines (or mobile telephony subscribers, in the case of mobile telephony providers) should be exempted from the proposed reporting requirement. Based on this exemption, the Commission estimates that fewer than 50 of the nation's largest service providers would remain subject to the proposed requirement. The Commission provides a detailed explanation for this proposed exemption and seeks comment on the 50,000 local access line threshold in the Notice.

64. With respect to broadband service, and irrespective of the criteria for reporting local competition data, the Commission tentatively concludes that entities that provide full broadband services to at least 1,000 customers should report. The Commission tentatively concludes that this more comprehensive reporting requirement is necessary to monitor broadband developments by smaller entities, for example, in rural areas. The Commission seeks comment on this proposed threshold and invites commenters to suggest alternative thresholds.

65. Among significant alternatives, the Commission considers whether it might rely on publicly available data or voluntary surveys, in lieu of a mandatory data collection program. The

Commission tentatively concludes other publicly available information sources present less than complete pictures of actual conditions and trends in developing local service markets and in the deployment of broadband. Further, the Commission considers the need for, and size of, its proposed exemptions for small entities. The Commission tentatively concludes that the proposed thresholds will allow it exempt most small entities from completing the survey without materially affecting its ability to assess the development of local competition and the deployment of broadband services.

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

66. None.

Ordering Clause

67. Accordingly, *it is ordered* that, pursuant to sections 1-5, 10, 11, 201-205, 215, 218-220, 251-271, 303(r), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151-155, 160, 161, 201-205, 215, 218-220, 251-271, 303(r), 332, and 403, and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this notice of proposed rulemaking is hereby adopted.

68. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects

47 CFR Parts 1 and 43

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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