share of the refill market than do vendors that refill and return ink jet cartridges to the user. Thus, the initial result of an ink jet cartridge designation could well be a net increase in solid waste, albeit a small increase when compared to the total amount of solid waste generated annually.

B. Performance

EPA's initial research indicated inconsistent quality among the ink jet cartridge refill kits and between the products of the ink jet cartridge refillers. EPA's research also indicated a lack of quality control standards for refillers and refill kits. Thus, while some refillers are able to produce refilled ink jet cartridges with acceptable performance characteristics, others have not been able to do so consistently. Because there are no testing or other quality control standards for procuring agencies to reference in their solicitations, the quality of refilled ink jet cartridges may be of concern.

Further, EPA's initial research indicated that users of refilled ink jet cartridges had sometimes experienced clogged nozzles and other performance problems. EPA has received additional information in the public comments that indicates performance problems have occurred. According to one commenter, refilled ink jet cartridges can create a number of problems, ranging from diminished ink quality to interference with the proper operation of the ink jet nozzle. Commenters also provided anecdotal information that faulty refilled ink jet cartridges can and have caused damage to the office equipment in which they were used. EPA discussed these performance concerns with GSA and found that, because GSA has offered refilled ink jet cartridges only recently, no record of customer satisfaction has been established. EPA seeks additional information about the performance of refilled ink jet cartridges, in particular the potential for damage to office equipment caused by the use of this item.

EPA also has received conflicting information about whether ink jet cartridges are designed to be refilled. Some original equipment manufacturers stated, in their public comments, that the components in ink jet cartridges are designed to last only for the supply of original ink. In other words, ink jet cartridges are designed to be disposable. However, there is evidence that ink jet cartridges can and are being refilled and can perform adequately, even if they are not performing identically to a new replacement ink jet cartridge.

C. Product Availability

EPA's initial research identified 24 companies that refill ink jet cartridges for customers nationwide. In its comments, a major manufacturer of new replacement ink jet cartridges questioned whether refillers offer national coverage, particularly to rural areas, although this manufacturer did not provide any hard evidence to the contrary. This manufacturer also commented that its products are available immediately, while refilled ink jet cartridges may not be available immediately. Again, the manufacturer did not substantiate this statement.

EPA has never limited its designations only to items that are available immediately in every part of the United States. Because the purpose of the federal buy-recycled program is to develop markets for products containing recovered materials, it has always been understood that these items might not be available to all procuring agencies in all instances. Rather, it is expected that, as procuring agencies seek to purchase products containing recovered materials, these items will become more widely and universally available. For this reason, RCRA section 6002 provides that procuring agencies are not required to buy an EPA-designated item containing recovered materials if that item is not available within a reasonable time. Nevertheless, the availability of refilling services and refilled ink jet cartridges is a consideration for EPA when designating ink jet cartridges. Therefore, EPA seeks additional information about the availability of refilled ink jet cartridges and refilling services.

IV. Conclusion

Usage of ink jet printers, facsimile machines, and plotters is increasing rapidly. The ink jet cartridge supplier industry also is evolving rapidly, as is the technology to refill ink jet cartridges. EPA believes that, consistent with the Agency's waste management hierarchy, which promotes waste prevention and recycling, ink jet cartridges should be designed to be refillable and/or recyclable, rather than disposable. However, these products must serve their intended purpose and perform in an acceptable manner. While the Agency acknowledges that some refilled ink jet cartridges may be of high quality, the questions about the performance of refilled cartridges discussed by commenters raise legitimate concerns that warrant further consideration before the Agency designates ink jet cartridges in the CPG. Moreover, designation of ink jet cartridges would not have a significant impact on the solid waste stream because the specialty plastic used in these cartridges cannot currently be made with recovered materials. There is, in addition, some concern that designation could actually result, in the near term, in a small increase in the generation of solid waste associated with ink jet cartridges. At this time, ink jet cartridge refill kits are generating more waste than discarded cartridges. Based on these factors, EPA has tentatively concluded that it is premature to designate ink jet cartridges at this time. EPA solicits comment on the information discussed in this notice and on the other newly docketed information referenced in this notice.

Dated: April 8, 1997.

David A. Bussard,

Acting Director, Office of Solid Waste.

[FR Doc. 97–9517 Filed 4–11–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 97–98; FCC 97–94]

Amendment of Rules and Policies Governing Pole Attachments

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In 1987, the Commission adopted its current pole attachment formula for calculating the maximum just and reasonable rates utilities may charge cable operators for pole attachments. In this *Notice of Proposed Rulemaking,* we seek comment as to whether the current pole attachment formula should be modified or adjusted to eliminate certain anomalies and rate instabilities particular parties assert have occurred. Should altering the formula become necessary, we have tentatively proposed a modification that would improve the formula's accuracy. In addition, we propose changes to the formula to reflect the present accounting system that replaced the former rules in 1988. Finally, we propose a new conduit methodology that will determine the maximum just and reasonable rates utilities may charge cable operators and telecommunications service providers for their use of conduit systems.

DATES: Comments are due on or before May 12, 1997 and Reply Comments are due on or before June 12, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission,

1919 M Street, N.W., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael T. McMenamin, Cable Services Bureau, (202) 418–7200, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, CS Docket No. 97–98, adopted March 14, 1997 and released March 14, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554. For copies in alternative formats, such as braille, audio cassette, or large print, please contact Sheila Ray at International Transcription Service.

Synopsis of the Notice of Proposed Rulemaking

1. This *Notice of Proposed Rulemaking* seeks comment on proposed modifications to the Commission's rules relating to the maximum just and reasonable rates utilities may charge for attachments made to a pole, duct, conduit or right-of-way. These attachments are referred to as ''pole attachments.'' We believe that a re-evaluation of this formula may be necessary to improve accuracy in the continued application of these rules to cable television systems and to telecommunications carriers pursuant to the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996). We also propose amending the formula so that it reflects our current accounting rules that apply to telephone companies. Finally, in this *Notice*, we propose a conduit methodology that will determine the maximum just and reasonable rates utilities may charge cable systems and telecommunications carriers for their use of conduit systems. The proposed formula would apply to all telecommunications carriers pending the effectiveness of the new formula required by the 1996 Act.

2. On August 26, 1994, Southwestern Bell Telephone Company (''SWB'') filed a Petition for Clarification, or in the Alternative, a Waiver of our formula for computing maximum reasonable pole attachment rates. SWB argues that in Oklahoma, the Commission's pole attachment formula produces a negative net cost of a bare pole and other negative figures, resulting in negative rates. SWB asserts that these abnormal results arise as the original costs of the poles are depreciated over time, particularly since the cost of removing the pole at the end of its useful life is included in the original cost of the pole. Because the cost of removal can be high, SWB argues it has resulted in negative net pole investment for its poles in Oklahoma. SWB proposes to remedy the rate problem by extracting the cost of removing poles from the formula for calculating the accumulated depreciation used to determine pole attachment rates. This would increase the net pole investment SWB would use in applying the formula, thereby making SWB's pole attachment rates positive under that formula.

3. *Potential Adjustments to the Pole Attachment Formula*: As detailed below, we seek comment on the issues raised by SWB's petition. We also seek comment on aspects of the current formula that may require modification.

4. The Commission seeks comment as to whether over time, and with increased demand, the average pole height has increased to an average of 40 feet and whether the usable space presumption should also be changed from 13.5 feet to 11 feet. The Commission recognizes the National Electric Safety Code requirement that a 40 inch safety space must exist between electric lines and communication lines. We seek comment on the premise that the safety space emanates from a utility's requirement to comply with the NESC and should properly be assigned to the utility as part of its usable space. We also seek comment on the premise that the 40 inch safety space emanates from a utility's requirement to comply with the NESC and should properly be assigned to the utility as part of its usable space.

5. Poles of 30 feet or less are currently included in the calculation of cost of bare pole. We seek comment on whether including these smaller poles in the numerator and denominator of the cost of bare pole calculation results in a distorted determination of the actual costs of a bare pole. We also seek comment on this proposal and whether poles of 30 feet or less lack a sufficient amount of usable space to accommodate multiple attachments.

6. We seek comment as to the scope of the problem raised in SWB's petition. For instance, we seek comment on the number of jurisdictions where accumulated depreciation balances exceed the gross pole investment. We also seek comment on the rates being charged in such jurisdictions. When our formula defining the maximum just and reasonable rate for pole attachments is applied to poles with negative net asset values, the result is either extremely low pole attachment rates or negative rates. In this *Notice*, we suggest that if the frequency with which this problem occurs does not warrant the proposed adjustment to the pole attachment formula, then a case-by-case approach could be used. If commenters agree that the scope of the problem warrants an adjustment, we propose to do so.

7. This *Notice* proposes eliminating the anomalous effect by adjusting the current net investment approach to allow for the elimination of the net salvage amount (which is typically a negative amount) from the accumulated depreciation balance for poles at such time that the net asset value of poles becomes negative. Removal of the net salvage amount would, for the purpose of pole attachment rate calculation, restate the accumulated depreciation account to reflect only the depreciation of the pole investment, and would restore the net pole investment to a positive balance. The calculation of the appropriate amounts to recognize the continuing cost of pole ownership could then be made as currently provided in the formula. Each time a new rate is to be developed, the pole account should be examined before the accumulated depreciation balance is adjusted. If there is a positive balance, no adjustment to the accumulated depreciation account should be made. Alternatively, if the accumulated depreciation balance is negative our proposed adjustment should be made. We seek comment on whether the application of the appropriate factors to the net pole amount, adjusted as proposed, would provide a fair rate for sharing in the recovery of continuing expenses associated with pole ownership.

8. Further, in these instances we do not believe that it would be appropriate to continue to calculate a return on investment that has been fully recovered. Thus, we propose that the calculation of the return element should be made separately without removal of net salvage amounts. The return element would be computed on the basis of the unadjusted net pole balance and the result added (as a negative amount) to the carrying charges for administrative, maintenance, and tax expenses. We believe that the inclusion of this negative return element is reasonable and appropriate because the utility has, in effect, already recovered more than the original cost of its pole plant through depreciation charges. While this ''over-recovery'' is necessary to defray the costs of disposing of the poles when they are retired from service, the utility has the use of any over-recovered amounts until the disposal of the poles actually takes place. We seek comment

on our tentative conclusion that a utility's pole attachment rates should reflect this over-recovery, in the form of a negative return carrying charge. Moreover, we seek comment on our proposal to include only operating taxes, other than income taxes, in the rate formula.

9. In proposing the use of this adjustment methodology, we are concerned that because telephone and electric utilities install poles over time at various original costs and because net salvage estimates vary over time, the extraction of the net salvage effect from accumulated depreciation could prove to be difficult. In addition, current FCC and Federal Energy Regulatory Commission accounting reports do not provide information with respect to the net salvage effect. We seek comment on the feasibility of this methodology as proposed. Additionally, we seek comment on the effectiveness of the methodology for the development of fair pole attachment rates and on proposed modifications necessary to make this methodology effective in attaining this objective. Finally, commenters are requested to provide detailed assessments of the effects of this methodology on attachment rates. Based on our initial assessment of this proposed adjustment, we do not believe that the application of the adjustment where appropriate will have any significant impact on current pole attachment rates.

10. Alternatively, we seek comment on calculating pole attachment rates using gross book costs instead of net book costs. Under this approach the cost of a bare pole and most carrying charges are computed using gross book costs. *Prior to the Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, Report and Order, 2 FCC Rcd 4387 (1987), *recon*., 4 FCC Rcd 468 (1989), the Commission had decided certain cases using gross book costs to calculate maximum reasonable pole attachment rates. The Commission also has stated that if both parties to a pole attachment complaint agree, the pole attachment rates may be computed using gross book costs. The use of gross book costs appears consistent with the legislative history supporting Section 224, which indicates that the Commission has significant discretion in selecting a methodology for determining just and reasonable pole attachment rates. We seek comment on this alternative to ensure a complete record on possible changes to the current formula. We note that because of the way administrative costs are allocated, the application of gross book costs may produce a slightly higher rate. We seek comment on whether this assumption is true and if so what the impact of this change would be.

11. *Proposed Conduit Methodology*. Section 224 provides that total conduit space and conduit space occupied by a cable operator or telecommunication provider is based on duct or conduit capacity. In addition, Section 224 states that: ''a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity * * *'' The usable space can be estimated based on the number of ducts or portion of a duct that a cable occupies. However, we have tentatively concluded that measuring the actual portion of duct space occupied by a cable would be difficult and would most likely lead to further disputes between the parties. Instead of attempting to measure the actual duct space occupied, we propose to adopt a new half-duct conduit methodology as was recently done by the Commission in the Memorandum Opinion and Hearing Designation Order of *Multimedia Cablevision, Inc.* v. *Southwestern Bell Telephone*, 11 FCC Rcd 11202 (September 3, 1996) (''Southwestern Bell''). In order to apply the half-duct formula, a determination of the cost per foot of one duct must be made, and then divided by one-half to produce a ''half-duct convention.'' This determines the maximum just and reasonable rate per duct foot that can be charged for cable attachments.

12. We seek comment on the proposed half-duct methodology. The Commission, in the *Southwestern Bell*, concluded that the half-duct methodology is the simplest and most reasonable approximation of the actual space occupied by an attacher. In addition, the Commission found that the half-duct methodology is the most straight forward approach to calculating a conduit attachment fee because it does not require the parties to prove the actual amount of the duct the cable operator occupies. We solicit comment on this approach which the Commission adopted in the *Southwestern Bell*. We also seek comment on any additional proposals that would provide a simple and administratively efficient conduit methodology.

Initial Regulatory Flexibility Analysis

12. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice* to be sent to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'') in accordance with Section 603(a) of the RFA, 5 U.S.C. § 603(a).

13. *Need for Action and Objectives of the Proposed Rule*. In 1987, the Commission adopted its current pole attachment formula for calculating the maximum just and reasonable rates utilities may charge cable systems for pole attachments. In this *Notice*, we seek comment as to whether the current pole attachment formula should be modified or adjusted to eliminate certain anomalies and rate instabilities particular parties assert have occurred. We have also tentatively proposed such possible modifications to the formula, should altering the formula become necessary, that would improve the accuracy of the formula. In addition, we propose changes to the formula to reflect the present Part 32 accounting system that replaced the former Part 31 rules in 1988. Finally, we propose a new conduit methodology that will determine the maximum just and reasonable rates utilities may charge cable systems and telecommunications carriers for their attachments to conduit systems.

14. *Legal Basis*. The authority for the action as proposed for this rulemaking is contained in Sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 224, 303 and 403.

15. *Description and Estimate of the Number of Small Entities Impacted*. For the purposes of this *Notice*, the RFA defines a ''small business'' to be the same as a small business concern under the Small Business Act, 15 U.S.C. § 632, 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) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications,

except Radiotelephone) to be a small entity when it has fewer than 1500 employees, *See* 13 CFR § 121.201.

A. Utilities

16. *Total Number of Utilities Affected.* The decisions and rules adopted herein may have a significant effect on a substantial number of utility companies. Section 224 of the Statue defines a ''utility'' as ''any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.'' The SBA has provided the Commission with a list of utility firms which may be effected by this rulemaking. Based upon the SBA's list, the Commission seeks comment as to whether all of the following utility firms are relevant to Section 224.

1. Electric Utilities (SIC 4911, 4931 & 4939)

17. *Electric Services.* The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1,379 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 reported that 447 of the 1,379 firms listed had total revenues below five million dollars. *Electric and Other Services Combined.* The SBA has classified this entity as a utility whose business is primarily electric, less than 95%, 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. *Combination Utilities, Not Elsewhere Classified.* The SBA defines this utility has 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.

2. Gas Production and Distribution (SIC 4922, 4923, 4924, 4925 & 4932)

18. *Natural Gas Transmission.* The SBA's definition of a small natural gas transmitter is an entity who is engaged in the transmission and storage of natural gas. The Census Bureau reports that a total of 144 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small natural gas transmitter is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars. *Natural Gas Transmission and Distribution.* The SBA has classified this entity as a utility who transmits and distributes natural gas for sale. The Census Bureau reports that a total of 126 such entities were in operation for at least one year at the end of 1992. The SBA's definition of a small natural gas transmitter and distributer is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars. *Natural Gas Distribution.* The SBA defines a natural gas distributor as an entity that distributes natural gas for sale. The Census Bureau reports that a total of 478 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small natural gas distributor is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars. *Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution.* The SBA has classified this entity as a utility who engages in the manufacturing and/or distribution of the sale of gas. These mixtures may include natural gas. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small mixed, manufactured or liquefied petroleum gas producer or distributor is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars. *Gas and Other Services Combined.* The SBA has classified this entity as a gas company whose business is less than 95% gas, in combination with other services. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small gas and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars.

3. Water Supply (SIC 4941)

19. *Water Supply.* The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use. The Census Bureau reports that a total of 3,169 water utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small water utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 3,065 of the 3,169 firms listed had total revenues below five million dollars.

4. Sanitary Systems (SIC 4952, 4953 & 4959)

20. *Sewerage Systems.* The SBA defines a sewage firm as a utility whose business is the collection and disposal of waste using sewage systems. The Census Bureau reports that a total of 410 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sewerage system is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars. *Refuse Systems.* The SBA defines a firm in the business of refuse as an establishment whose business is the collection and disposal of refuse ''by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials.'' The Census Bureau reports that a total of 2,287 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small refuse system is a firm whose gross revenues did not exceed six million dollars. The Census Bureau reported that 1,908 of the 2,287 firms listed had total revenues below six million dollars. *Sanitary Services, Not Elsewhere Classified.* The SBA defines these firms as engaged in sanitary services. The Census Bureau reports that a total of 1,214 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sanitary service firms gross revenues did not exceed five million dollars. The Census Bureau reported that 1,173 of the 1,214 firms listed had total revenues below five million dollars.

5. Steam and Air Conditioning Supply (SIC 4961)

21. *Steam and Air Conditioning Supply.* The SBA defines a steam and air conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air. The Census Bureau reports that a total of 55 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a steam and air conditioning supply utility is a firm whose gross revenues did not exceed nine million dollars. The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars.

6. Irrigation Systems (SIC 4971)

22. *Irrigation Systems.* The SBA defines irrigation systems as firms who operate water supply systems for the purpose of irrigation. The Census Bureau reports that a total of 297 firms were in operation for at least one year at the end of 1992. According to SBA's definition, an irrigation service is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars.

B. Telephone Companies (SIC 4813)

23. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of small telephone companies. 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, *See* 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*). This number contains a variety of different categories of carriers, including local exchange carriers (LECs), 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'', *See* 15 U.S.C. § 632(a)(1). 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 this *Notice.* Below, we estimate the potential number of small entity telephone service firms or small incumbent LEC's that may be affected by this service category.

24. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) 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 fewer 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 or rules that come about from this *Notice.*

25. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of LECs 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, 1,347 companies reported that they were engaged in the provision of local exchange services, See Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data,* Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996) (*TRS Worksheet*). 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 LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by this *Notice.*

26. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange 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 IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity IXCs that may be affected by the decisions and rules adopted in this *Notice.*

27. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 30 companies reported that they were engaged in the provision of competitive access 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 CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 30 small entity CAPs that may be affected by the decisions and rules adopted in this *Notice.*

28. *Wireless (Radiotelephone) Carriers.* Although wireless carriers have not historically affixed their equipment to utility poles, pursuant to the terms of the 1996 Act, such entities are entitled to do so with rates

consistent with the Commission's rules discussed herein. 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 fewer 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 this *Notice*.

29. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 789 companies reported that they were engaged in the provision of cellular 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 cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers that may be affected by the decisions and rules adopted in this *Notice*.

30. *Mobile Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 117 companies reported that they were engaged in the provision of 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 mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers that may be affected by the decisions and rules adopted in this *Notice*.

31. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR § 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Our definition of a ''small entity'' in the context of broadband PCS auctions has been approved by SBA, *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 (1994).

The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in this *Notice* includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

32. At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Of the 153 qualified bidders for the D,E, and F Block PCS auctions, 105 were small businesses, *See Auction of Broadband Personal Communications Services (D, E and F blocks),* Public Notice, DA 96–1400 (rel. August 20, 1996). Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million, *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* WT Docket No. 96–59, *Amendment of the Commission's Cellular/PCS Cross-Ownership Rule,* Report and Order, GN Docket No. 90–314, FCC 96–278 (June 24, 1996). We cannot estimate, however, the number of these licenses that will be won by small entities under our definition, nor how many small entities will win D or E Block licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume for purposes of this FRFA, that all of the licenses in the D, E, and F Block Broadband PCS auctions may be awarded to small entities under our rules, which may be affected by the decisions and rules adopted in this Notice.

33. *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. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA, *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. 89–583, Second Order on Reconsideration and Seventh Report and Order, 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, 11 FCC Rcd 1463 (1995). The rules adopted in this Order 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. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small

entities, which may be affected by the decisions and rules adopted in this *Notice.*

34. 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 conclude that the number of geographic area SMR licensees affected by the rule adopted in this Order 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. However, the Commission 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 assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this *Notice*.

35. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone 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 resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this *Notice.*

C. Cable System Operators (SIC 4841)

36. *Cable Systems:* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million 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, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

37. 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, *See* 47 CFR. § 76.901(e). Based on our most recent information, we estimate that there were 1,439 cable systems that qualified as small cable system operators at the end of 1995, *See* Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 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 systems. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this *Notice*.

38. 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'', *See* 47 U.S.C. § 543(m)(2). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 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, *See* 47 CFR § 76.1403(b). Based on available data, we find that the number of cable systems serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable systems under the definition in the Communications Act.

39. *Municipalities:* The term ''small governmental jurisdiction'' is defined as ''governments of * * * districts, with a population of less than fifty thousand'', *See* 5 U.S.C. § 601(5). There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. We note that Section 224 of the Act specifically excludes any utility which is cooperatively organized, or any person owned by the Federal Government or any State. For this reason, we believe that Section 224 will have minimal if any affect upon small municipalities. Further, there are 18 States and the District of Columbia that regulate pole attachments pursuant to Section 224(c)(1). Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000.

40. *Reporting, Recordkeeping, and other Compliance Requirements:* The rules proposed in this *Notice* may require a change in certain record keeping requirements to reflect modification of Part 31 to Part 32 accounting, as well as maintaining specific records if adjustments proposed are used by the pole owner for the development of attachment rates. We seek comment on this tentative conclusion. In addition, as proposed in this *Notice*, a pole owner may have to adjust his pole and conduit attachment rates.

41. *Significant Alternatives Which Minimize the Impact on Small Entities and which are Consistent with State Objectives:* The first possible option is to keep the rules in their current form, for which we have sought comment. The alternative would be to adjudicate anomalies resulting from the current pole attachment formula on a case-by-case basis, thereby minimizing impact on all interested parties. In addition, with respect to conduit methodology, we have proposed a methodology that relies on a rebuttable presumption that an attachment occupies one half of a duct space. This rebuttable presumption can be used by small entities to minimize the detail required to establish certain rates for use of conduit. If such methodology was more burdensome to a small entity, such entity could use its actual records for establishing the appropriate rate. We seek comment on these methodologies and any other potential impact of these proposals on small business entities. Finally, the *Notice* seeks to further minimize

burdens on small entities in conformance with the 1996 Act.

42. *Federal Rules which Overlap, Duplicate, or Conflict with the Commission's Proposal:* None.

Ordering Clauses

43. *It is ordered* that pursuant to Sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 224, 303 and 403, *Notice is hereby given* of the proposals described in this *Notice of Proposed Rulemaking.*

44. *It is further ordered* pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 224, that the Petition for Clarification, or in the Alternative, a Waiver of Southwestern Bell Telephone Company *is dismissed*.

45. *It is further ordered* that the Secretary shall send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* (1981).

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Communications common carriers, Investigations, Lawyers, Penalties, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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