

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
World Communications	)	
Satellite Systems, Inc.	)	File No. EB-03-TC-038
	)	
	)	NAL/Acct. No. 200332170006
Apparent Liability for Forfeiture	)	FRN: 0009553652
	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: September 8, 2003**

**Released: September 9, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”),<sup>1</sup> we find that World Communications Satellite Systems, Inc. (“WCSS”) apparently willfully and repeatedly violated a Commission order by failing to respond to a directive of the Enforcement Bureau (“Bureau”) to provide certain information and documents. Upon our review of the facts and circumstances surrounding this apparent violation, we find that WCSS is apparently liable for a forfeiture in the amount of \$10,000.

**II. BACKGROUND**

2. On July 15, 2003, the Bureau sent a Letter of Inquiry to WCSS, noting that it was investigating allegations that WCSS may have engaged in the unauthorized conversion of a consumer’s telephone service, commonly referred to as “slamming,” and directing WCSS to provide information and documents specified in the Letter.<sup>2</sup> The information that the Bureau directed WCSS to provide related to whether WCSS had changed the preferred carrier for 19 consumers. The Letter also directed WCSS to provide the telemarketing scripts that were used, documents related to verification of the customers’ requests that their carrier be changed, WCSS’s corporate structure, WCSS’s procedures to evaluate the performance of its telemarketing employees, and information relating to alleged misrepresentations made

<sup>1</sup> See 47 U.S.C. § 503(b)(4)(A). The Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has “willfully or repeatedly” failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act. The section provides that the Commission must assess such penalties through the use of a written notice of apparent liability or notice of opportunity for hearing.

<sup>2</sup> Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to World Communications Satellite Systems, Inc. (July 15, 2003) (“Letter” or “Letter of Inquiry”).

by these employees to customers. The response to the Letter of Inquiry was due 30 days after the Bureau sent the Letter, *i.e.*, by August 14, 2003. On July 28, 2003, WCSS submitted a request under the Freedom of Information Act (“FOIA”) for Commission records related to the complaints specified in the July 15 Letter of Inquiry.<sup>3</sup> On August 4, 2003, counsel for WCSS requested an extension of the time to respond to the Letter of Inquiry until September 1, 2003, so that WCSS could review the response to the FOIA request before it filed the response to the Letter of Inquiry.<sup>4</sup> The Bureau granted the extensions, first to August 22 and then to August 27.<sup>5</sup> On August 14, the Bureau responded to the FOIA request, withholding certain documents on the ground that release would interfere with the ongoing investigation pursuant to FOIA exemption 7(A).<sup>6</sup> On August 22, WCSS counsel sent an E-Mail objecting to the withholding of documents and requesting a further extension of the time to respond to the Letter of Inquiry until the dispute concerning the FOIA request had been resolved or the time for filing an appeal of the FOIA response had run.<sup>7</sup> The Bureau denied the request for a further extension of time.<sup>8</sup>

3. On August 27, 2003, WCSS submitted a letter to the Bureau<sup>9</sup> outlining reasons why WCSS believed it did not need to provide any of the information or documentation the Bureau directed it to provide. WCSS argued that the Commission had no jurisdiction to conduct the investigation on the grounds that the complaints in question had been fully resolved by state agencies, except for one complaint to the Commission for which it had provided the Commission with all relevant evidence in its possession. It further argued that the failure of the Commission to provide all information in the Commission’s possession about the case until the release of an NAL is unduly prejudicial, because, in its view, the issuance of an NAL is tantamount to a finding of liability. The only documents WCSS provided with its response were letters it sent to state agencies and to the Commission regarding informal complaints that had been filed by the complainants. Some of these letters referenced verification tapes, but no verification tapes were provided to the Bureau in response to the Letter of Inquiry.

## II. DISCUSSION

### A. Apparent Violation Evidenced in the Record

4. As explained below, WCSS’ apparent failure to respond to the Letter of Inquiry evidences an apparent willful or repeated violation of a Commission order.

5. The issue presented here is whether WCSS is apparently liable for violating the Bureau’s directive that it respond to the Bureau’s inquiries. This order was within the Bureau’s authority to issue, and, in any event, parties are required to comply with Bureau orders even if they believe them to be outside the Commission’s authority.<sup>10</sup> The letter submitted by WCSS on August 27 did not provide the information and documentation that the Bureau directed it to provide, and WCSS has not complied with

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<sup>3</sup> Letter from Loubna W. Haddad, counsel for WCSS, to Managing Director, FCC (July 28, 2003).

<sup>4</sup> E-Mail from Loubna W. Haddad to Colleen K. Heitkamp (August 4, 2003).

<sup>5</sup> E-Mail from Colleen Heitkamp to Loubna W. Haddad (August 5, 2003); E-Mail from Colleen Heitkamp to Loubna W. Haddad (August 20, 2003).

<sup>6</sup> Letter from Colleen Heitkamp to Loubna W. Haddad (August 14, 2003).

<sup>7</sup> E-Mail from Loubna Haddad to Colleen Heitkamp (August 22, 2003).

<sup>8</sup> E-Mail from Colleen Heitkamp to Loubna Haddad (August 26, 2003).

<sup>9</sup> Letter from Charles H. Helein, counsel for WCSS, to Colleen K. Heitkamp (August 27, 2003) (“Helein Letter”).

<sup>10</sup> 47 U.S.C. § 416(c); *SBC Communications, Inc.*, 17 FCC Red 7589, 7591 (2002).

the order to date. Therefore, we find that WCSS apparently committed a willful and repeated violation of a Commission order.

6. The Commission has statutory authority to require its regulatees to respond to Commission inquiries. In sections 4(i), 4(j), 208, 218, and 403 of the Act, Congress afforded us broad authority to investigate regulated entities.<sup>11</sup> This broad investigative authority in these sections individually and collectively encompasses the authority to obtain from carriers information and documents. Section 218 of the Act authorizes us to “obtain from ... carriers ... full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.” This provision plainly grants us broad investigative power. Section 403 also gives the Commission broad authority to “make and enforce orders” relating to the matter under investigation. Moreover, it gives the Commission the same “powers and authority” in conducting an investigation that it would have when investigating a section 208 complaint. In this regard, section 208 says the Commission can investigate such matters “in such manner and such means as it shall deem proper.”<sup>12</sup> The broad authority in sections 4(i) and 4(j) for the Commission to “issue such orders ... as may be necessary in the execution of its functions” and to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice” further supports our authority to require the production of information. It is well established that sections 4(i) and 4(j) afford the Commission broad general authority and power, and the Bureau's action here falls comfortably within the scope of that authority as well. In sum, the Bureau was well within its authority in requiring WCSS to provide information and documents relevant to the investigation.<sup>13</sup>

7. WCSS argues that the failure of the Bureau to provide all information in the Commission's possession about the case until the release of an NAL is unduly prejudicial, because, in its view, the issuance of an NAL is tantamount to a finding of liability.<sup>14</sup> WCSS's argument is essentially the same argument as the Commission rejected in another slamming investigation in which the defendant was represented by the same counsel as is WCSS. In *WebNet Communications, Inc.*,<sup>15</sup> decided prior to WCSS's refusal in this case to comply with the Bureau's order, the Commission said:

WebNet claims that the issuance of the *WebNet NAL* is equal to a “conviction” against which it never had the opportunity to defend itself. This claim reflects a fundamental misunderstanding of the statutory framework under which the Commission issues an NAL, and the nature of an NAL itself. Section 503(b) of the Act allows the Commission to assess a forfeiture penalty only after it releases a notice of *apparent* liability, which cannot be the basis for imposing a forfeiture penalty unless and until the recipient is afforded an opportunity to respond in writing. That section 503(b) does not require the Commission to give a carrier an opportunity to address allegations in consumer complaints before issuing an NAL is, therefore, of no legal significance...<sup>16</sup>

8. WCSS further argues that the Commission had no jurisdiction to conduct the investigation on the grounds that the complaints in question had been fully resolved by state agencies, except for one complaint to the Commission for which it had provided the Commission with all relevant evidence in its

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<sup>11</sup> 47 U.S.C. §§ 154(i), 154(j), 208, 218, 403.

<sup>12</sup> 47 U.S.C. § 208.

<sup>13</sup> See *SBC Communications, Inc.*, 17 FCC Rcd 7589 (2002).

<sup>14</sup> Helein Letter at 4.

<sup>15</sup> 18 FCC Rcd 6870 (*WebNet*).

<sup>16</sup> *WebNet*, 18 FCC Rcd at 6871 (footnotes omitted).

possession.<sup>17</sup> The Commission also considered and rejected this argument in *WebNet*. As the Commission explained:

... *WebNet* misunderstands the distinction between a slamming adjudication under our rules and an enforcement action pursuant to section 503(b) of the Act. Sections 64.1150 through 64.1170 of the Commission's rules authorize adjudicatory proceedings to bring financial restitution to a consumer who has been slammed. Although each slamming allegation is adjudicated under those rules, that does not shield a carrier from separate enforcement action like this one, which stems from *WebNet*'s willful or repeated violations of section 258 of the Act and section 64.1120 of our rules...<sup>18</sup>

...[W]hether the adjudication happens on a state or federal level, the adjudication of slamming complaints does not shield a carrier from separate liability for separate enforcement action based on those same complaints. The forfeiture proposed by the *WebNet NAL*, however, is separate and distinct from the restitution *WebNet* has already paid to complainants (whether at the state or federal level)...

... Furthermore, because state adjudication of slamming complaints is separate from federal enforcement action on the same complaints, this proceeding does not place *WebNet* in double jeopardy—a concept which, in any case, does not apply to civil administrative procedures such as this monetary forfeiture process.<sup>19</sup>

9. For the reasons stated in *WebNet*, we find that WCSS's argument that the Commission has no jurisdiction to conduct this investigation has been previously considered by the Commission and rejected. WCSS's argument that it requires the Commission's response to its FOIA request before it can respond to the Letter of Inquiry is apparently based on its misunderstanding that the NAL is tantamount to a finding of liability, and therefore WCSS needs all documents in the Commission's files before the NAL is released. Again, we find that the Commission has determined that this assumption is erroneous.<sup>20</sup> Under the Communications Act, a recipient of an order requiring a regulated company to provide information must comply with the order as long as it shall be in effect.<sup>21</sup> In view of the foregoing facts, it appears that WCSS willfully and repeatedly violated a Commission order.<sup>22</sup> In view of the WCSS's counsel's knowledge of the *WebNet* order, WCSS's legal arguments appear to be frivolous and made for the purpose of delay. For this reason, we find the apparent violation to be egregious.

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<sup>17</sup> Helein letter at 2-3.

<sup>18</sup> 18 FCC Rcd at 6872 (footnotes omitted).

<sup>19</sup> 18 FCC Rcd at 6873-74 (footnotes omitted).

<sup>20</sup> 18 FCC Rcd at 6871.

<sup>21</sup> 47 U.S.C. § 416(c).

<sup>22</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Act provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

**B. Forfeiture Amount**

10. We conclude that WCSS apparently willfully and repeatedly violated a Commission order by failing to provide the information and documents the Bureau directed it to provide. Accordingly, a proposed forfeiture is warranted against WCSS for its apparent willful and repeated violations of the order.

11. As adjusted by statute, Section 503(b) of the Act authorizes the Commission to assess a forfeiture of up to \$120,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act by a common carrier.<sup>23</sup> In exercising such authority, we are to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>24</sup>

12. The Commission's Forfeiture Policy Statement establishes a base forfeiture amount of \$4,000 for failure to respond to Commission communications.<sup>25</sup> Moreover, as noted above, section 503(b) gives the Commission discretion to assess an adjusted amount of \$120,000 per violation by a common carrier or licensee. In view of the nature and gravity of the violation, we believe that we are warranted in exercising that discretion in assessing a forfeiture amount of \$10,000.

13. It is important that WCSS not continue to violate its obligation to respond to Commission inquiries. Accordingly, if WCSS fails to respond to the Letter of Inquiry within five business days from the release of this NAL, such failure and further continued violation of the Bureau's directive will likely subject WCSS to further more significant enforcement action such as higher forfeitures.<sup>26</sup>

**III. CONCLUSION AND ORDERING CLAUSES**

14. We have determined that WCSS apparently committed a willful and repeated violation of a Commission order by failing to provide information and documents directed by the Bureau. We have further determined that WCSS is apparently liable in the amount of \$10,000.

15. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, and authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§0.111, 0.311, that World Communications Satellite Systems, Inc. ("WCSS") IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of \$ 10,000 for willful and repeated violations of a Commission order as described in the paragraphs above.<sup>27</sup>

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<sup>23</sup> 47 U.S.C. § 503(b). Pursuant to the Debt Collection Improvement Act of 1996, P.L. 104-134, 110 Stat. 1321-358, the statutory maximum amount for a forfeiture penalty shall be adjusted for inflation at least once every four years. The current maximum, as adjusted, is \$120,000. 47 C.F.R. § 1.80(b)(5).

<sup>24</sup> 47 C.F.R. § 1.80.

<sup>25</sup> *In the Matter of the Commission's Forfeiture Policy Statement*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

<sup>26</sup> *See Western Wireless Corporation*, 18 FCC Rcd 10319 (2003); *Escotel Cellular*, 5 FCC Rcd 6996 (CCB 1990).

<sup>27</sup> Documentary information forming the basis of this NAL is available for copying by WCSS, pursuant to standard Commission practice.

(continued....)

16. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice of Apparent Liability, WCSS SHALL PAY the full amount of the proposed forfeiture<sup>28</sup> OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C., 20554.<sup>29</sup>

19. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Telecommunications Consumers Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

20. IT IS FURTHER ORDERED that copies of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to The Helein Law Group, 8180 Greensboro Drive, Suite 700, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>28</sup> The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on WCSS' check or money order to "NAL/Acct. No. 200332170006" Such remittances must be mailed to Forfeiture Collection section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

<sup>29</sup> 47 C.F.R. § 1.1914.

ATTACHMENT A

## FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

<b>(1) Small Organization</b>	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
<b>(2) Small Governmental Jurisdiction</b>	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
<b>(3) Small Business</b>	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
<b>Industry Type</b>	<b>Description of Small Business Size Standards</b>
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – <b>Small Cable Company</b> has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

**Note:** With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<b>International Services</b>	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
<b>Mass Media Services</b>	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – <b>Small Business</b> is less than \$40M in annual gross revenues for three preceding years
<b>Wireless and Commercial Mobile Services</b>	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	



220 MHz Radio Service – Phase II Licensees	Auction special size standard - <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - <b>Small Business</b> is \$40M or less in annual gross revenues for three previous calendar years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - <b>Small Business</b> is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	<b>Small Business</b> is 1,500 employees or less <b>Small Government Entities</b> has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	<b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – <b>Small Business</b> has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less

Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – <b>Small Business</b> is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	<b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
<b>Miscellaneous</b>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)

