

of this chapter, as the Commission shall permit or require be treated as exogenous by rule, rule waiver, or declaratory ruling.

\* \* \* \* \*

(vi) Such tax law changes and other extraordinary cost changes as the Commission shall permit or require be treated as exogenous by rule, rule waiver, or declaratory ruling.

\* \* \* \* \*

(e) The "w[(GDP-PI-X-[g/2))/(1+(g/2))]" component of the PCI formula contained in paragraph (c) of this section shall be employed only in the adjustment made in connection with the annual price cap filing.

\* \* \* \* \*

7. Section 61.47 is amended by revising paragraphs (e), (g)(1), (g)(2), (g)(4), and (h)(2) to read as follows:

**§ 61.47 Adjustments to the SBI; pricing bands.**

\* \* \* \* \*

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Except as provided in paragraphs (f), (g), and (h) of this section, each band shall limit the pricing flexibility of the service category or subcategory, as reflected in the SBI, to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year.

\* \* \* \* \*

(g) (1) *Local Exchange Carriers—Service categories and subcategories.* Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(w) shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate two separate subindexes: One for the DS1 services offered by such carriers and the other for the DS3 services offered by such carriers. The annual pricing flexibility for each of these two subindexes shall be limited to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for the special access services basket, measured from the last day of the preceding tariff year.

(2) The upper pricing band for the tandem-switched transport service category shall limit the annual upward pricing flexibility for this service category, as reflected in its SBI, to two percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year. The lower pricing band for the tandem-switched transport service

category shall limit the annual downward pricing flexibility for this service category, as reflected in its SBI, to ten percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year.

\* \* \* \* \*

(4) Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(v) shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate a separate subindex for the 800 data base vertical features offered by such carriers. The annual pricing flexibility for this subindex shall be limited to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for the traffic sensitive basket, measured from the last day of the preceding tariff year.

\* \* \* \* \*

(h) \* \* \*

(2) The annual pricing flexibility for each of the subindexes specified in paragraph (h)(1) of this section shall be limited to an annual increase of five percent or an annual decrease of fifteen percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year.

12. Section 61.48 is amended by revising paragraphs (h)(3)(ii)(B), (h)(5)(i), (i)(3)(ii)(B), and (i)(4)(ii) to read as follows:

**§ 61.48 Transition rules for price cap formula calculations.**

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(B) 0.90 times the SBI value for the special access services included in the category or subcategory on the day preceding the transport restructure date, weighted by the revenue weight of the transport services included in the category or subcategory.

\* \* \* \* \*

(5) \* \* \*

(i) The upper pricing band for the tandem-switched transport service category shall limit the upward pricing flexibility for this service category, as reflected in its SBI, to two percent, measured from the initial restructured rates for tandem-switched transport. The lower pricing band for the tandem-switched transport service category shall limit the downward pricing flexibility for this service category, as reflected in its SBI, to ten percent,

measured from the initial restructured rates for tandem-switched transport.

\* \* \* \* \*

(i) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(B) 0.85 times the SBI value for the services included in the zone category on the day preceding the later date, weighted by the revenue weight of the later services included in the zone category.

\* \* \* \* \*

(4) \* \* \*

(ii) From the later date through the end of the following tariff year, the annual pricing flexibility for each of the subindexes specified in paragraph (i)(4)(i) of this section shall be limited to an annual increase of five percent or an annual decrease of fifteen percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the tariff year preceding the tariff year in which the later date occurs.

\* \* \* \* \*

[FR Doc. 95-9571 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 69**

[CC Docket No. 93-6; FCC 95-94]

**Safeguards To Improve Administration of the Interstate Access Tariff and Revenue Distribution Processes**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission ("FCC" or "Commission") has adopted a Report and Order and Order to Show Cause ("Order") adopting new rules to reform the interstate access tariff and revenue distribution processes administered by the National Exchange Carrier Association, Inc. ("NECA"). The Order amends the rules to include five directors from outside the local exchange carrier ("LEC") industry on NECA's Board of Directors. The Order adopts additional measures to increase NECA and LEC accountability to the FCC, and strengthen NECA's internal operations. In addition, the Order directs NECA to show cause why it should not be required to amend its incentive compensation plan to eliminate any incentive based upon common line or traffic sensitive pool earnings, or that might otherwise induce NECA officers or employees to violate Commission requirements. The FCC adopted this Order to assure that NECA

administers the interstate access tariff and revenue distribution processes in accordance with FCC rules.

**EFFECTIVE DATE:** May 19, 1995. NECA shall submit its response to the Commission's order to show cause on or before June 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** William A. Kehoe III, telephone number 202-418-0850, or John Hays, telephone number 202-418-0875.

**SUPPLEMENTARY INFORMATION:** This is a summary of the FCC's Report and Order and Order to Show Cause ("Order") in Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, FCC 95-94, CC Docket No. 93-6, adopted March 3, 1995 and released March 8, 1995. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M St., NW., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, the International Transcription Service, at 2100 M Street, NW., suite 140, Washington, DC 20037, telephone number 202-857-3800.

### Regulatory Flexibility Analysis

In the Notice of Proposed Rulemaking<sup>1</sup> in this proceeding, the Commission certified that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposals in this proceeding were adopted, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.<sup>2</sup> Those proposals addressed by the administration of the interstate access tariff and revenue distribution processes by NECA, which is an association of LECs. Because of the nature of local exchange and access service, the Commission has concluded that LECs, including small LECs, are dominant in their fields of operation and therefore are not "small entities" as defined by that act.<sup>3</sup> The Secretary has sent a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of that act.<sup>4</sup>

<sup>1</sup> Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, *Notice of Proposed Rulemaking*, 8 FCC Rcd 1503, 1510, 58 FR 11203, 11204 (1993) (Notice).

<sup>2</sup> 5 U.S.C. 601(3).

<sup>3</sup> See MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983).

<sup>4</sup> 5 U.S.C. 603(a).

### Synopsis of the Report and Order and Order to Show Cause

The NECA is an association of LECs established in 1984, at the direction of the Federal Communications Commission, to administer important Commission programs. These programs now include the common line ("CL") and traffic sensitive pools, the universal service fund, the lifeline assistance program, and the long term support program. The Commission's rules require LECs to report revenue, cost, and demand data to NECA so that NECA can administer these programs in accordance with Commission requirements.<sup>5</sup>

In 1989 and 1990, the Common Carrier Bureau ("Bureau") audited certain data that the Bell Operating Companies ("BOCs") had reported to NECA's CL pool during late 1988 and early 1989. That audit disclosed that several NECA directors appeared to have participated in an attempt to influence improperly the CL pool earnings for 1988 by inducing certain large LECs to report data to NECA that were inconsistent with our accounting, separations, and access charge rules. In a November 9, 1990 letter to NECA,<sup>6</sup> the Commission expressed concern regarding the directors' apparent misconduct. The Commission required NECA to hire an independent auditor to recommend safeguards to prevent manipulation of NECA's processes. NECA hired Ernst & Young, which filed its report on this audit with the Commission on December 9, 1991.<sup>7</sup> This report acknowledged NECA's improvement since the Bureau audit and recommended additional measures to improve the interstate access tariff and revenue distribution processes further.<sup>8</sup> NECA has implemented many of the recommendations that required no Commission action and has asked the Commission to act when such action was required.<sup>9</sup>

<sup>5</sup> 47 CFR 69.116(c), 69.117(c), 69.605(a).

<sup>6</sup> Letter from Donna R. Searcy, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990) (*November 9 Letter*).

<sup>7</sup> Ernst & Young, Review and Recommended Pool Safeguards, AAD 91-24 (filed Dec. 9, 1991) (Safeguards Report).

<sup>8</sup> The improvements included a new emphasis on rule compliance, changes to NECA's bylaws that make NECA's Board deliberations more systematic, and better methods for ensuring that the data LECs submit to NECA comply with Commission requirements. We discuss these improvements in subsequent portions of this Order.

<sup>9</sup> For instance, after the independent auditor recommended that the NECA Board include directors from outside the LEC industry, NECA petitioned the Commission for a rule change to add two outside director positions to its Board.

In the Notice in this Docket, the Commission proposed to adopt those recommendations of the independent auditor that it found warranted Commission action. The Commission's proposals focused on the composition and operation of NECA's Board, on the relationship between NECA and the Commission, and on methods for strengthening NECA's internal operations. Sixteen parties filed comments on the Notice, and five parties replied.

In this Order, the Commission adopts many of its proposals. To bring independent views to NECA's deliberations and to help ensure that NECA complies with Commission requirements, the Commission changes the composition of NECA's Board. Effective January 1, 1996, NECA's Board will consist of five directors from outside the LEC industry, two directors representing the BOCs, two directors representing other LECs having annual operating revenues in excess of \$40 million, and six directors representing LECs having annual operating revenues of less than \$40 million. These directors will serve one-year terms, but, if they seek reelection, must face contested elections at least every three years. The Commission requires that each NECA Board committee include at least one outside director, and eliminates restrictions on the membership of NECA's CL and traffic sensitive committees.

In the Order, the Commission reiterates that, in preparing interstate access tariff filings and distributing interstate revenue, NECA must correct any data that it reasonably believes do not comply with our rules. To help ensure that NECA receives complete and accurate data from LECs, the Commission requires that responsible LEC officers or employees certify data submissions to NECA. The Commission also requires NECA to report annually to the Commission on the results of its cost study review process. In addition, the Commission orders NECA to show cause why it should not be required to amend its incentive compensation plan for its officers and employees to eliminate any incentives that may reward rule violations. The Commission, however, declines to require LECs that do not participate in NECA's pools to obtain independent audits of their costs studies. It also declines to require NECA to provide it with on-line access to NECA data bases at this time.

In taking these actions, the Commission emphasized that it has no wish to superintend NECA's day-to-day operations, and that it does not believe

that its actions intrude upon NECA's managerial discretion. NECA, however, is an organization established at the Commission's direction, whose structure and principal functions are specified by Commission rules.<sup>10</sup> The Commission believes that, to discharge its own responsibility to ensure the reasonableness of interstate telephone rates, it must ensure that NECA is discharging its responsibilities under the Commission's rules.

**Ordering Clauses**

Accordingly, It Is Ordered, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201-05, 218-20, and 403, that Part 69 of the Commission's rules, 47 CFR Part 69, IS AMENDED, as specified below.

It Is Further Ordered, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201-05, 218-20, and 403, that NECA shall file an annual report as specified in paragraphs 64 and 65 of the Report and Order.

It Is Further Ordered, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201-05, 218-20, and 403, that NECA shall show cause why it should not be required to amend its incentive compensation plan to eliminate any incentive based upon common line or traffic sensitive pool earnings or that might otherwise induce NECA officers or employees to violate Commission requirements.

It Is Further Ordered, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201-05, 218-20, and 403, that, pending further Commission order, NECA shall not make any incentive payments based on the rates of return earned by the common line or traffic sensitive pools.

**List of Subjects in 47 CFR Part 69**

Access charges, Telephone.  
Federal Communications Commission.  
**William F. Caton,**  
*Acting Secretary.*

**Rule Amendments**

Part 69 of Title 47 of the CFR is amended as follows:

**PART 69—ACCESS CHARGES**

1. The authority citation for part 69 continues to read as follows:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.601 is amended by adding a new paragraph (c) to read as follows:

**§ 69.601 Exchange carrier association.**

\* \* \* \* \*

(c) All data submissions to the association required by this Title shall be accompanied by the following certification statement signed by the officer or employee responsible for the overall preparation for the data submission:

**Certification**

I am (title of certifying officer or employee). I hereby certify that I have overall responsibility for the preparation of all data in the attached data submission for (name of carrier) and that I am authorized to execute this certification. Based on information known to me or provided to me by employees responsible for the preparation of the data in this submission, I hereby certify that the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the U.S. Code, Title 18, Section 1001).

3. Section 69.602 is revised to read as follows:

**§ 69.602 Board of directors.**

(a) For purposes of this section, the association membership shall be divided into three subsets:

(1) The first subset shall consist of the telephone companies owned and operated by the seven Regional Bell Holding Companies;

(2) The second subset shall consist of all other telephone companies with annual operating revenues in excess of forty million dollars;

(3) The third subset shall consist of all other telephone companies. All commonly controlled companies shall be deemed to be one company for purposes of this section.

(b) There shall be fifteen directors of the association.

(c) Until 1996, three directors shall represent the first subset, three directors shall represent the second subset, and nine directors shall represent the third subset. In 1996 and thereafter, two directors shall represent the first subset, two directors shall represent the second subset, six directors shall represent the third subset, and five directors shall represent all three subsets.

(d) No director who represents all three subsets shall be a current or former officer or employee of the association or of any association member, or have a business relationship or other interest that could interfere with his or her exercise of independent judgment.

(e) Each subset shall select the directors who will represent it individually through an annual election in which each member of the subset shall be entitled to vote for the number of directors that will represent such members' subset.

(f) The association membership shall select the directors for the following calendar year who will represent all three subsets through an annual election in which each member of the association shall be entitled to one vote for each director position. There shall be at least two candidates meeting the qualifications in paragraph (d) of this section for each such director position:

(1) In any election in which the most recently elected director for such position is not a qualified candidate;

(2) If there has been no election for such position having more than one qualified candidate during the present and the two preceding calendar years; and

(3) In any election for which the ballot lists two or more qualified candidates.

(g) At least one director representing all three subsets shall be a member of each committee of association directors.

(h) For each access element or group of access elements for which voluntary pooling is permitted, there shall be a committee that is responsible for the preparation of charges for the associated access elements that comply with all applicable sections in this part.

(i) Directors shall serve for a term of one year commencing January 1 and concluding on December 31 of each year.

4. Section 69.605 is amended by adding a new paragraph (e) to read as follows:

**§ 69.605 Reporting and distribution of pool access revenues.**

\* \* \* \* \*

(e) The association shall submit a report on or before February 1 of each calendar year describing the association's cost study review process for the preceding calendar year as well as the results of that process. For any revisions to cost study results made or recommended by the association that would change the respective carrier's calculated annual common line or traffic sensitive revenue requirement by ten percent or more, the report shall include the following information:

<sup>10</sup> See 47 CFR 69.601-69.612.

- (1) The name of the carrier;  
 (2) A detailed description of the revisions;  
 (3) The amount of the revisions;  
 (4) The impact of the revisions on the carrier's calculated common line and traffic sensitive revenue requirements; and  
 (5) The carrier's total annual common line and traffic sensitive revenue requirement.

[FR Doc. 95-9575 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 94-66; RM-8469]

#### Radio Broadcasting Services; Tyler, Fairfield and Commerce, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Gleiser Communications, Inc., substitutes Channel 221C3 for Channel 221A at Tyler, Texas, and modifies the license of Station KDOK(FM) to specify operation on the higher powered channel. To accommodate the upgrade at Tyler, the Commission also substitutes Channel 256A for Channel 221A at Fairfield, Texas, and Channel 277A for Channel 221A at Commerce, Texas; and modifies the licenses of Station KNES(FM) and KEMM(FM), respectively, to reflect the change in channels. See 59 FR 3589, July 14, 1994, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94-66, adopted April 6, 1995, and released April 14, 1995. The full text of this Commission 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. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

The following channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 221C3 can be allotted to Tyler with a site restriction

of 1.6 kilometers (1.0 miles) west to accommodate Gleiser's desired site. The coordinates for Channel 221C3 at Tyler are 32-20-42 and 95-19-08. Channels 256A and Channel 277A can be allotted to Fairfield and Commerce, respectively, at the transmitter sites specified in Stations KNES(FM) and KEMM(FM)'s licenses. The coordinates for Channel 256A at Fairfield, Texas, are 31-41-52 and 96-09-44. The coordinates for Channel 277A at Commerce, Texas, are 33-11-40 and 96-01-20.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 221A and adding Channel 221C3 at Tyler; by removing 221A and adding Channel 256A at Fairfield; and by removing Channel 221A and adding Channel 277A at Commerce.

Federal Communications Commission.

**John A Karousos,**

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

[FR Doc. 95-9628 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-F

#### DEPARTMENT OF DEFENSE

#### 48 CFR Parts 225 and 252

#### Defense Federal Acquisition Regulation Supplement; Restriction on Procurement of Goods

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the existing foreign source restrictions for machine tools and valves, buses, chemical weapons antidote, air circuit breakers, and antifriction bearings, by uniformly permitting acquisition of Canadian items, expanding and standardizing the waiver criteria, and exempting acquisitions below the simplified acquisition threshold from these restrictions.

**DATES:** *Effective date:* April 10, 1995.

**Comment date:** Comments on the interim rule should be submitted in writing to the address below on or before June 19, 1995, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 94-D314 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim DFARS rule implements 10 U.S.C. 2534 as amended by Section 814 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337) and Section 4102(i) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355). Section 814 revises the existing foreign source restrictions for machine tools and valves, buses, chemical weapons, antidote, air circuit breakers, and antifriction bearings, by uniformly permitting acquisition of Canadian items, and by expanding and standardizing the waiver criteria. Section 4102(i) exempts acquisitions below the simplified acquisition threshold from these restrictions.

##### B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule expands the conditions under which non-U.S. products may be acquired. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address specified herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94-D314 in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any additional information collection requirements which require the approval of the Office of