

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 60 feet upstream of county boundary.	None	*1553

Maps available for inspection at the Carter County Courthouse, 801 Elk Avenue, Elizabethton, Tennessee.

Send comments to Mr. Truman Clark, Carter County Executive, Carter County Courthouse, 801 Elk Avenue, Elizabethton, Tennessee 37653.

Tennessee .....	Watauga (City) Carter County.	Watauga River .....	Just downstream of U.S. Route 321 .....	None	*1414
			Approximately 1.3 miles downstream of Smalling Road.	None	*1429

Maps available for inspection at the Watauga City Hall, 104 West Avenue, Watauga, Tennessee.

Send comments to Ms. Hattie Skeans, Watauga City Acting Manager, P.O. Box 68, Watauga, Tennessee 37694.

West Virginia .....	Boone County (Un- incorporated Areas).	Little Coal River .....	Approximately 1.26 miles downstream of confluence of Big Spinnacle Creek.	*161	*160
			Approximately 0.2 mile upstream of State Route 17.	*702	*701
			Spruce Fork .....	*702	701
			Pond Fork .....	*702	*701

Maps available for inspection at the Office of the Emergency Services Director, Avenue C, Madison, West Virginia.

Send comments to Mr. Gordon Eversole, President of the Boone County Commission, 200 State Street, Madison, West Virginia 25130.

West Virginia .....	Danville (Town) Boone County.	Little Coal River .....	Approximately 100 feet upstream of U.S. Route 119.	*694	*692
			Approximately 0.36 mile downstream of the confluence of Hopkins Branch.	*697	*695

Maps available for inspection at the Danville City Hall, Park Avenue, Danville, West Virginia.

Send comments to The Honorable Mark McClure, Mayor of the Town of Danville, P.O. Box 217, Danville, West Virginia 25053.

West Virginia .....	Madison (City) Boone County.	Little Coal River .....	Approximately 0.36 mile downstream of the confluence of Hopkins Branch.	*697	*695
			Approximately 0.2 mile upstream of State Route 17.	*702	*701
			Spruce Fork .....	*702	*701
			Pond Fork .....	*702	*701

Maps available for inspection at the Madison City Hall, 261 Washington Avenue, Madison, West Virginia.

Send comments to The Honorable Andrew Dolan, Mayor of the City of Madison, 261 Washington Avenue, Madison, West Virginia 25130.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96-3854 Filed 2-20-96; 8:45 am]

BILLING CODE 6718-04-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Chapter I**

[CC Docket No. 96-21, FCC 96-59]

**Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this Notice of Proposed Rulemaking, the Commission proposes a regulatory regime to govern the Bell operating companies (BOCs) provision of all "out-of-region" interstate, interexchange services (including interLATA and intraLATA services). Specifically, we consider whether the BOCs should be regulated as dominant or non-dominant carriers with respect to the provision of such out-of-region services. We tentatively conclude that, if a BOC provides out-of-region interstate, interexchange services through an affiliate that satisfies the separation requirements established in the *Competitive Carrier* proceeding, the BOC affiliate should be regulated as a

non-dominant carrier. This Notice does not address BOC provision of in-region, interexchange services. These proposed rules will permit the rapid entry by the BOCs into the provision of out-of-region interstate, interexchange services while providing protection against anticompetitive conduct.

**DATES:** Comments must be submitted on or before March 13, 1996. Reply comments must be filed on or before March 25, 1996.

**ADDRESSES:** Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C.

20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

**FOR FURTHER INFORMATION CONTACT:** Melissa Waksman (202) 418-0913 or Michael Pryor (202) 418-0495, Common Carrier Bureau, Policy and Program Planning Division.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking released and adopted on February 14, 1996. (FCC 96-59). The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

## Synopsis of Notice of Proposed Rulemaking

### I. Introduction

1. The Telecommunications Act of 1996 ("1996 Act") has just authorized the Bell Operating Companies ("BOCs") to provide interLATA services originating outside their in-region states. Prior to enactment of the 1996 Act, the BOCs were prohibited from providing interLATA services by the terms of the Modification of Final Judgment ("MFJ"). In this Notice of Proposed Rulemaking, we propose a regulatory regime to govern the BOCs' provision of all "out-of-region" interstate, interexchange services (including interLATA and intraLATA services). Specifically, we consider whether the BOCs should be regulated as dominant or non-dominant carriers with respect to the provision of such out-of-region services. We tentatively conclude that, if a BOC provides out-of-region interstate, interexchange services through an affiliate that satisfies the separation requirements established in the *Competitive Carrier* proceeding, the BOC affiliate should be regulated as a non-dominant carrier. Under the terms of the 1996 Act, a BOC's provision of 800 service, private line service, or their equivalents that terminate in an in-region state of that BOC are considered in-region services even if such service originates out-of-region. This Notice does not address BOC provision of in-region, interexchange services. We further note that BOC provision to commercial mobil radio services customers, of interstate, interLATA

services originating outside any of the BOC's in-region states, is included in the out-of-region services addressed in this proceeding.

### II. Background

2. Between 1979 and 1985, the Commission conducted the *Competitive Carrier* proceeding, in which it examined how its regulations should be adapted to reflect and facilitate the increasing competition in telecommunications markets. In a series of orders, the Commission distinguished between carriers with market power (dominant carriers) and those without market power (non-dominant carriers). The Commission gradually relaxed its regulation of non-dominant carriers because it concluded that non-dominant carriers could not engage in conduct that may be anticompetitive or otherwise inconsistent with the public interest.

3. In its *First Report and Order*, 45 FR 76148, November 18, 1980, the Commission classified local exchange carriers ("LECs") and AT&T as dominant carriers and concluded that these dominant carriers should be subject to the "full panoply" of then-existing Title II regulation. Recently, in light of increasing competition in the interstate, domestic, interexchange telecommunications market, and evidence that AT&T no longer possesses the ability to control price unilaterally, the Commission reclassified AT&T as a non-dominant carrier in that market.

4. In its *Fourth Report and Order*, 48 FR 52452, November 18, 1983, the Commission considered how it should regulate the provision of interstate, interexchange services by independent LECs. By "independent LECs" we refer to exchange telephone companies other than the BOCs. The Commission determined that interexchange carriers affiliated with independent LECs would be regulated as non-dominant carriers. In the *Fifth Report and Order*, 49 FR 34824, September 4, 1984, the Commission clarified that an "affiliate" of an independent LEC for purposes of qualifying for regulation as a non-dominant carrier is "a carrier that is owned (in whole or part) or controlled by, or under common ownership (in whole or part) or control with, an exchange telephone company." The Commission went on to explain that in order to qualify for non-dominant status, the affiliate must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the exchange telephone company; and (3) obtain any exchange telephone company services at tariffed rates and conditions. The Commission noted that

these requirements would avoid imposing excessive burdens on independent LECs. The Commission further concluded that, if an independent LEC provided interstate, interexchange services directly, rather than through an affiliate, those services would be subject to dominant carrier regulation.

5. In the *Fifth Report and Order*, the Commission also addressed the possible entry of the BOCs into interstate, interexchange services in the future:

The BOCs currently are barred by the [Modification of Final Judgment] from providing interLATA services. \* \* \* If this bar is lifted in the future, we would regulate the BOCs' interstate, interLATA services as dominant until we determined what degree of separation, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant regulation.

6. The 1996 Act authorizes the BOCs to provide out-of-region interstate and intrastate interLATA services upon enactment. More specifically, Section 271(b)(2) of the Communications Act provides that a BOC or BOC affiliate may provide interLATA services originating outside its in-region States after the date of enactment of the 1996 Act, subject to the provisions of section 271(j). The 1996 Act does not require a BOC to obtain Commission authorization in order to begin offering out-of-region, interstate, interLATA services.

### II. Analysis

7. In order to permit efficient and rapid entry by the BOCs into out-of-region interstate, interexchange services, as contemplated by the 1996 Act, we seek in this proceeding to establish promptly the regulatory framework that will govern the BOCs' provision of such services. At the same time, we also seek to ensure that sufficient regulatory safeguards are in place to prevent a BOC from gaining any unfair competitive advantage, either through unreasonably discriminatory practices or cross-subsidization, that could arise because of its ownership and control of local exchange facilities.

8. Since divestiture, the MFJ has prohibited the BOCs from entering the domestic, interstate, interLATA market. Therefore, they will enter this market in out-of-region states with little or no market share. Additionally, we have found that significant segments of the domestic, interstate, interexchange market are characterized by substantial competition. In our recent AT&T Order we found that there is significant excess capacity in this market and that there are a large number of long-distance carriers, including four nationwide,

facilities-based competitors, AT&T, MCI, Sprint, and WorldCom; dozens of regional facilities-based carriers; and several hundred smaller resale carriers. We further concluded that AT&T lacked individual market power in the overall interstate, domestic, interexchange market. These facts suggest that, upon entry into the provision of out-of-region interstate, interexchange services, BOC affiliates would not be likely to possess market power.

9. The BOCs, however, continue to control bottleneck local exchange facilities in their in-region states. The Commission has expressed concern about possible problems arising from an interexchange carrier's control over local exchange facilities. In its *First Report and Order* in the *Competitive Carrier* proceeding, the Commission stated that predivestiture AT&T's control of bottleneck facilities was "prima facie evidence of market power requiring detailed regulatory scrutiny." The Commission reiterated its concern over potential cost-shifting and anticompetitive conduct by exchange telephone companies in its *Fifth Report and Order*. Because of such concerns, the Commission determined that interstate, interexchange services provided directly by independent LECs, rather than through an affiliate, should be regulated as dominant.

10. The Commission further concluded, however, that an affiliate of an independent LEC providing interstate, interexchange services would qualify as a non-dominant carrier if the affiliate were sufficiently separated from the local exchange company. The Commission specified the separation requirements that would provide some "protection against cost-shifting and anticompetitive conduct" by an independent LEC that could result from using its control of bottleneck facilities. The Commission concluded that the specific separation requirements would not impose excessive burdens on independent LECs and noted that those requirements were less stringent than those established in the *Second Computer Inquiry*.

11. In seeking to facilitate timely entry by the BOCs into the provision of out-of-region interstate, interexchange services, consistent with the 1996 Act, we tentatively conclude that the separation requirements applied to independent LECs provide a useful model upon which to base, on an interim basis, oversight of BOC provision of out-of-region interstate, interexchange services. We intend to consider in our upcoming interexchange proceeding, however, whether it may be appropriate to modify or eliminate the

separation requirements in order for some or all LECs to qualify for non-dominant treatment in the provision of out-of-region interstate, interexchange services.

12. While we address here the BOCs' provision of interexchange services originating outside the regions where the BOCs control local bottleneck facilities, some of this traffic will terminate in the regions where the BOCs retain control of local bottleneck facilities. We tentatively conclude that the separation requirements found adequate to permit non-dominant regulation of independent LEC provision of interstate, interexchange services originating and often terminating in their regions should be sufficient to allow similar treatment of BOC provision of interexchange services that originate out of their in-region states.

13. Thus, we tentatively conclude that, for now, if a BOC creates a separate affiliate to provide out-of-region interstate, interexchange services (including interLATA and intraLATA services), and if the affiliate satisfies the conditions set forth in the *Fifth Report and Order*, then the affiliate will be classified as a non-dominant carrier. As previously noted, these conditions are that the affiliate must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the BOC local exchange company; and (3) obtain any BOC exchange telephone company services at tariffed rates and conditions. We note that independent local exchange carriers providing interexchange services through affiliates pursuant to the *Fifth Report and Order* treat those affiliates as nonregulated affiliates under the Commission's joint cost rules and affiliate transaction rules for exchange carrier accounting purposes. We seek comment on whether a BOC affiliate providing out-of-region, interstate, interexchange services should be treated as a nonregulated affiliate for BOC accounting purposes. Finally, we tentatively conclude, at least for the present time, that if a BOC directly, or through an affiliate that fails to comply with these separation requirements, provides out-of-region interstate, interexchange services, those services will be regulated as dominant carrier offerings.

14. We invite comment on our tentative conclusions regarding BOC provision of out-of-region interLATA and intraLATA services. Any party disagreeing with these tentative conclusions should explain with specificity its position and suggestions for alternative regulatory policies. As

noted, we believe that applying the well-established Fifth Report and Order requirements will facilitate rapid entry by the BOCs into the provision of out-of-region services, consistent with the intent of the 1996 Act, without imposing onerous burdens on them.

#### IV. Procedural Issues

##### A. *Ex Parte* Presentations

This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR §§ 1.1202, 1.1203, 1.1206.

##### B. *Regulatory Flexibility Analysis*

16. We certify that the Regulatory Flexibility Act is not applicable to the rule changes we are proposing in this proceeding. If the proposed rule changes are promulgated, 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. Entities directly subject to the rule changes, and proposed rule changes, are large corporations engaged in the provision of local exchange and exchange access telecommunications services. We are nevertheless committed to reducing the regulatory burdens on small communications services companies whenever possible, consistent with our other public interest responsibilities. The Secretary shall send a copy of this Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601, *et seq.* (1981).

##### C. *Comment Filing Procedures*

17. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before 21 days after publication in the Federal Register, and reply comments on or before 10 days after the comment due date. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles

of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

18. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments be no longer than twenty-five (25) pages and reply comments be no longer than fifteen (15) pages. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading.

19. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

#### D. Ordering Clauses

20. Accordingly, it is ordered that pursuant to Sections 1, 4, 201-205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 215, 218 and 220, a notice of Proposed Rulemaking is hereby adopted.

21. It is Further Ordered that, the Secretary shall send a copy of this notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

Federal Communications Commission.

William F. Caton,  
*Acting Secretary.*

[FR Doc. 96-3917 Filed 2-20-96; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 232

[FRA Docket No. PB-9, Notice No. 5]

RIN 2130-AA73

#### Power Brake Regulations: Two-way End-of-Train Telemetry Devices

**AGENCY:** Federal Railroad Administration (FRA).

**ACTION:** Notice of public regulatory conference.

**SUMMARY:** FRA is scheduling a public regulatory conference to further discuss issues related to two-way end-of-train telemetry devices (2-way EOTs) previously developed in its notice of proposed rulemaking (NPRM) on power brakes published on September 16, 1994. By earlier notice, FRA indicated that it would defer action on the NPRM for a short period; however, FRA also stressed that it did not intend to defer implementation of the requirement for 2-way EOTs beyond the effective date contemplated by Congress. Consequently, FRA has decided to separate proposals regarding 2-way EOTs from the rest of the proposed power brake revisions and proceed with this public regulatory conference in order to clarify and resolve those issues related to 2-way EOTs and issue a final rule on this subject as soon as practicable. FRA urges railroads to immediately begin acquiring and equipping trains with 2-way EOTs to enhance the safety of their operations rather than waiting until issuance of the final rule.

**DATES:** (1) *Written Comments:* Written comments must be received no later than April 15, 1996. Comments received after that date will be considered to the extent practicable without incurring additional expense or delay.

(2) *Public Regulatory Conference:* A public regulatory conference to discuss issues related to 2-way EOTs will be held March 5, 1996 beginning at 8:30 a.m. in Washington, D.C. Any person wishing to participate in the public regulatory conference should notify the Docket Clerk at the address provided below at least five working days prior to the date of the conference. This notification should identify the party the person represents and the particular issues the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the conference

of persons who fail to provide such notification.

**ADDRESSES:** (1) *Written Comments:* Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in room 8201 of the Nassif Building at the above address.

(2) *Public Regulatory Conference:* The public regulatory conference will be held at the following location and date:

Location: Nassif Building, Conference Room 2230, 400 Seventh Street SW, Washington, D.C. Date: March 5, 1996. Time: 8:30 a.m.

#### FOR FURTHER INFORMATION CONTACT:

Thomas Peacock, Motive Power and Equipment Division, Office of Safety, RRS-14, Room 8326, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-366-9186), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-366-0628).

#### SUPPLEMENTARY INFORMATION:

##### Background

In 1992, Congress amended the Federal rail safety laws by adding certain statutory mandates related to power brake safety. See 49 U.S.C. 20141 (formerly contained in Section 7 of the Rail Safety Enforcement and Review Act, Pub. L. No. 102-365 (September 3, 1992), amending Section 202 of the Federal Railroad Safety Act (FRSA) of 1970, formerly codified at 45 U.S.C. 421, 431 *et seq.*). In these amendments, Congress instructed the Secretary of Transportation (Secretary) to promulgate regulations requiring the use of 2-way EOTs. Congress' mandate sets out various minimum requirements that any promulgated rule must contain and specifically lists various types of operations that are to be excluded from the requirements, leaving the Secretary with discretion to exclude other types of operations if it is in the public interest and consistent with railroad safety. See 49 U.S.C. 20141. Congress mandated that the rules be promulgated by the end