mechanisms which would allow small entities to be exempt in whole or in part from the closed captioning requirements. These measures are intended, in part, to minimize the regulatory impact on small entities.

43. Section 713(d)(1) provides that the Commission may exempt classes of video programming or video providers where closed captioning would be economically burdensome. Pursuant to this provision, the Commission proposes to establish a general classification or a number of classifications of programming for which captioning would be economically burdensome. Thus, the Commission seeks comment on whether a definition of economic burden should be based on relative size, degree of distribution, audience ratings or share, relative programming budgets or revenue base, lack of repeat value, or a combination of factors.

44. Section 713(d)(3) permits video programming providers or program owners to petition the Commission for an exemption where our video captioning requirements would constitute an undue burden. 47 U.S.C. 613(d)(3). Section 713(d)(3) further provides specific factors to be considered when resolving such petitions. Accordingly, the Commission seeks comment on how to apply these factors and whether there are any factors which should be considered when determining if a requirement for closed captioning results in an undue burden for an individual video programming provider or program owner.

Ex Parte

45. *Ex parte Rules*—Non-Restricted Proceeding. 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, and 1.1206(a).

Comment Dates

46. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 28, 1997, and reply comments on or before March 24, 1997. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus 11 copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ordering Clauses

47. Authority for this proposed rulemaking is contained in Sections 4(i), 4(j), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 613.

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

List of Subjects

47 CFR Part 25

Communications common carriers, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 26

Communications common carriers, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 73

Education, Political candidates, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable television, Political candidates, Reporting and recordkeeping requirements.

47 CFR Part 100

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–2535 Filed 1–31–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 63

[CC Docket No. 97–11; FCC 97–6]

Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing a Notice of Proposed Rulemaking (''NPRM'') to seek comment on the scope of the statutory exemption under Section 402(b)(2)(A) of the Telecommunications Act of 1996. Section 402(b)(2)(A) provides that common carriers are exempt from the requirements of Section 214 of the Communications Act of 1934, as amended (''the Act'') ''for the extension of any line.'' The Commission seeks comment on how ''extension of any line'' should be defined. It tentatively concludes that an ''extension of a line'' is a line that allows the carrier to expand its service into a geographic territory that it is eligible to serve, but that its network does not currently reach. The Commission also proposes to forbear, under Section 401 of the 1996 Act (47 U.S.C. 160), from exercising Section 214 authority over ''new'' lines with respect to local exchange carriers (''LECs'') subject to price cap regulation, LECs that are considered average schedule companies, and domestic carriers deemed non-dominant, whether they are offering local or domestic, long distance services. In addition, the Commission proposes to grant Section 214 blanket authority for small projects undertaken by carriers to construct new lines. Further, it seeks comment on other alternatives, including whether to treat price cap LECs which have elected a ''no-sharing'' X-factor differently from other price-cap LECs and whether to forbear altogether from applying Section 214 to small carriers. The intended effect of this action is to implement Section 402(b)(2)(A).

DATES: Comments are due on or before February 24, 1997 and Reply Comments are due on or before March 17, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before April 4, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Room 222, Washington, D.C. 20554. Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554. International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet dconway@fcc.gov. Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer, Attorney, Network

Services Division, Common Carrier Bureau, (202) 418–2334. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway, (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking adopted January 9, 1997, and released January 13, 1997 (FCC 97–6). 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, D.C. and is also available from the FCC's World Wide Web site, http://www.fcc.gov. 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 D.C. 20037.

Paperwork Reduction Act

The NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due April 4, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0149.

Title: Application and Supplemental Information Requirements—Part 63, Section 214, Sections 63.01–63.601.

Form No.: N/A.

Type of Review: Proposed revision to Existing Collection.

Respondents: Businesses or others for profit, including small businesses.

Number of Respondents: 255.

Estimate Hour Per Response: 10 hours.

Total Annual Burden: 2550.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: The information is used to determine if proposed facilities are needed and to monitor the growth of networks and the availability of common carrier services in the telecommunications market, to relieve carriers and the Commission of a review of each subsequent facility addition.

Synopsis of Notice of Proposed Rulemaking

Table of Contents

I. Introduction and Background

Section 214 of the Communications Act of 1934, as amended, imposes regulatory obligations on common carriers seeking to change their facilities or construct new facilities. Section 214 states that ''[n]o carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line.'' Congress enacted Section 214 to prevent useless duplication of facilities that could result in increased rates being imposed on captive telephone ratepayers.

On February 8, 1996, the Telecommunications Act of 1996 was signed into law to ''establish a pro-competitive, de-regulatory national policy'' framework for the United States telecommunications industry. As part of this comprehensive legislation, Congress adopted Section 402(b)(2)(A) of the 1996 Act. This provision states that, ''[t]he Commission shall permit any common carrier to be exempt from the requirements of Section 214 of the Communications Act of 1934 for the extension of any line . * * *'' Under this exemption, carriers seeking to extend their lines of communication no longer need to seek Commission authorization for their proposals under Section 214 or our Part 63 rules. Accordingly, we have initiated this rulemaking proceeding: (1) to implement Section 402(b)(2)(A) of the 1996 Act; and (2) to determine the extent to which the Commission should exercise its remaining Section 214 authority in light of the forbearance provisions of the 1996 Act.

II. Issues

A. Overview

Section 402(b)(2)(A) exempts common carriers from the requirements of Section 214 ''for the extension of any line.'' Accordingly, although they must continue to obtain appropriate authorization for the use of radio frequencies under Title III of the Communications Act of 1934, carriers are free to construct, acquire, operate, or transmit over the ''extension'' of a line without receiving Section 214 or Part 63 approval. In this notice, we seek comment on the scope of this statutory exemption and, in particular, on how ''extension of any line'' should be defined. As discussed below, we tentatively conclude that an ''extension of a line'' is a line that allows the carrier to expand its service into a geographic territory that it is eligible to serve, but that its network does not currently reach. We also propose to forbear, under Section 401 of the 1996 Act, from exercising Section 214 authority over ''new'' lines with respect to local exchange carriers (''LECs'') subject to price cap regulation, LECs that are considered average schedule companies, and domestic carriers deemed non-dominant, whether they are offering local or domestic, long distance services. In addition, we propose to grant Section 214 blanket authority for small projects undertaken by carriers to construct new lines. We also seek comment on other alternatives: namely (1) whether we should treat price cap LECs which have elected a ''no-sharing'' X-factor differently from other price-cap LECs; and (2) whether we should forbear altogether from applying Section 214 to small carriers.

1. Statutory Authority and Construction

4. Section 214 defines a ''line'' as ''any channel of communication established by the use of appropriate equipment, other than a channel of communications established by the interconnection of two or more existing channels.'' Section 214 identifies two broad categories of lines. A carrier may construct a ''new line'' or it may construct an ''extension'' of a line. Similarly, a carrier may acquire or operate a ''line'' or an ''extension thereof,'' and may transmit over ''such additional * * * line'' or ''extended line.'' Section 402(b)(2)(A) exempts carriers from the requirements of Section 214 with respect to the ''extension of any line.'' Accordingly, the exemption created by Congress in 402(b)(2)(A) applies to some, not all, of the carrier activities otherwise subject to Section 214 certification.

2. Definitional Issues

5. Although the text of Section 214 identifies discrete categories of transactions subject to Section 214 certification, historically, the certification process, standards, and requirements applicable to all such transactions have been identical. As a result, neither courts nor the Commission has had a need to provide specific definitions of these categories or to distinguish among them. The language of Section 402(b)(2)(A), however, requires that we now define the ''extension of any line'' and distinguish such an extension from ''new lines,'' which are not exempted from the requirements of Section 214.

6. In developing a definition of ''extension of any line,'' we believe that appropriate guidance should be drawn from three sources: (a) the meaning of the words, ''extension'' and ''new;'' (b) Congress's original purposes in enacting Section 214 of the 1934 Act and Section 402(b)(2)(A) of the 1996 Act; and (c) court and Commission precedent interpreting the text of Section 214 and Section 1(18–22) of the Interstate Commerce Act, from which Section 214 was derived.

7. (a) Definitions of ''Extension'' and ''New.'' Webster's dictionary defines ''extension'' as, *inter alia,* ''the act of extending or state of being extended'' or ''an addition to a main structure.'' The verb ''extend'' means ''to expand the area or scope of'' or ''to increase the influence of.'' By contrast, the word ''new'' is defined as ''having existed or been made for only a short time,'' ''unfamiliar,'' ''novel,'' or ''recently arrived or established in a position, place or relationship.''

8. Thus, the phrase ''extension of a line'' implies that, to extend its lines, a carrier should add to its network by beginning to serve new territory, thereby expanding its area of service. As distinguished from an extension, a ''new line'' suggests one which, independent of location, has recently been created or is in some other way ''novel.''

9. *(b) Legislative Intent.* Section 214 was originally enacted to prevent a monopoly carrier from engaging in ''useless duplication of facilities, with consequently higher charges upon the users of the service.'' The stated legislative purpose of the 1996 Act is ''to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.'' Consistent with this broad purpose, Congress enacted Section 402(b)(2)(A), intending to ''eliminate[] the Section 214 approval requirement for extension of lines.'' In this proceeding, we seek to give effect to the de-regulatory letter and spirit of the 1996 Act in general, and Section 402(b)(2)(A) specifically, thereby promoting competition by removing outdated barriers to entry in telecommunications markets.

10. *(c) Precedent.* In expanding their own networks, carriers generally undertake one of two basic types of activities. They may either (1) expand the geographic area covered by their facilities; or (2) increase the capabilities of their network within their existing service area. Each type of activity has implications with respect to the definition of the ''extension'' of a line.

11. *(1) Geographic Considerations.* Congress patterned Section 214 on Section 1(18–22) of the Interstate Commerce Act. In interpreting that provision, the Supreme Court defined ''extensions'' as lines ''the purpose and effect [of which] is to extend substantially the line of a carrier into new territory.'' Two 1938 Commission decisions generally followed the Supreme Court's ''new territory'' language in the communications context, and instruct our efforts to distinguish ''new'' lines from ''extensions.'' That year, the Commission used the term ''extension'' to describe the acquisition of telegraph lines to serve ''new territory not theretofore served'' by the acquiring carrier. In another opinion issued the same day, the Commission used the term ''new, additional or supplemental facilities'' to describe lines constructed by Southwestern Bell within its service area in Texas.

12. Other decisions, however, cloud the Commission's 1938 definition. Since that time, the Commission has also stated that: ''Section 214 is not confined to the 'extension' of a line—which might reasonably be construed as requiring some part of the common carrier facilities to cross a state boundary—but includes the 'construction of a new line' even though wholly within a single [s]tate so long as it is part of an interstate 'channel of communication' or 'line.'''

13. In the international context, in granting certain Section 214 authorizations, the Commission staff has cautioned that ''should [the carrier] obtain any interest in facilities beyond the authorized international points for the purpose of providing common carrier services, including private line service, between the U.S. and other international points, such action would constitute an extension of lines under Section 214.'' We recently indicated, however, that we would not be bound by this view and provided the following preliminary guidance with respect to the expansion of service into a new international market: ''When we grant a carrier initial authority to acquire and operate facilities to a particular country, we do not grant that carrier authority for an 'extension of lines' within the meaning of Section 214 * * * but instead grant that carrier authority to acquire and operate new lines to a particular geographic market.'' Thus, in the international context, we have suggested that lines that allow a carrier to serve new international markets should be considered ''new lines.''

14. *(2) Capacity Considerations.* Carriers can create new channels of communication, not only by expanding into new territory, but also by increasing the capabilities of their existing networks. Such increases may result from the laying of lines between points the carrier serves to supplement or supplant existing lines or from the use of technologically advanced electronic multiplexing, switching, coding, or similar central office or network equipment to allow a carrier to derive additional channels of communication from its existing facilities.

15. The Commission has consistently held that increases in capacity by either method create channels of communication requiring Section 214

authorization; however, the Commission has not clearly or consistently stated whether these channels should be considered ''new lines'' or ''extensions.''

16. The Commission has suggested that in-region lines installed to supplement existing ones constitute ''new lines.'' However, when it first considered the issue of in-region increases in capacity, the Commission stated that, in enacting Section 214, ''there was no intention on the part of Congress to limit the right of carriers to make full use of their own physical facilities by the derivation of as many circuits thereon or therefrom as possible. Therefore, it is not our opinion that Section 214 requires a certificate of convenience and necessity when a company of the Bell System rearranges its circuits or derives new circuits so as to make maximum use of its existing facilities, when the result is not an extension of a particular company's service into fields not theretofore served by it.'' Therefore, the Commission did not require Section 214 certification for such projects until after Congress amended Section 214 in 1943 to define a line as ''any channel of communication. * * *''

17. In light of the 1943 amendment, the Commission held that channels produced through the use of electronic equipment in conjunction with a pre-existing wire pair were ''lines'' within the meaning of Section 214. The Commission did not, however, indicate whether these lines were ''new'' lines or ''extensions.''

18. Noting that carriers are required to obtain Section 214 certification before installing multiplexing equipment, the Commission more recently stated that such equipment creates ''new 'lines' or channels under Section 214.'' Consistent with that holding, the Commission rejected a tariff filed by AT&T for Bell Packet Switching Service (''BPSS'') based on the fact that AT&T had not obtained Section 214 authority to install the required equipment. The Commission stated that ''the BPSS processor and interface facilities together perform multiplex operations that effectively establish new or additional channels of communication.'' Although both of these opinions specifically use the term ''new lines'' to describe channels of communication created electronically, we find little evidence to suggest that the Commission deliberately chose that term with the intent to distinguish such lines from ''extensions.''

19. Recent Commission precedent, also, fails to indicate whether activities that increase the capabilities of a carrier's in-region network create ''new'' lines or ''extensions.'' With respect to carrier installation of facilities for the provision of video dialtone (''VDT''), the Commission stated that, ''an upgrade of * * * facilities to offer video dialtone service constitutes the establishment or extension of a line. * * *'' Although the Commission continued its discussion by stating that ''[b]y constructing video dialtone platforms, LECs will be installing new systems and laying fiber to create new channels of communication,'' the Commission did not indicate clearly that it had consciously distinguished between ''new'' lines and ''extensions'' in characterizing VDT facilities.

20. With respect to international service, increases in a carrier's capacity to serve a given country would be considered ''lines'' under the Commission's interpretation of Section 214 since 1943. The Commission, however, did not assert its Section 214 jurisdiction over international lines created by electronically increasing the capacity of existing facilitites until 1964. That year, the Commission stated:

AT&T, and the various record carriers, have increased the capacity of, or the number of messages (voice and record) handled, by their respective facilities by the use of appropriate equipment; *e.g.* the use of Time Assignment Speech Interpolation (''TASI'') equipment by AT&T. To date, we have not exercised the authority given us pursuant to the provisions of Section 214 * * * to require the filing and a grant of appropriate applications before installation of such equipment. We feel, however, that, in view of the rapid growth of facilities in this field, the imminence of satellite communications, and the vast increase in facilities possible through heretofore unregulated installations, we should require such an application, and a grant thereof before the installation of such equipment.

The Commission went on to impose suitable conditions on the grant of the application at issue. The Commission did not, however, provide clear guidance as to whether it considered increases such as these to be ''new lines'' or ''extensions,'' or whether it made any principled distinction between channels created electronically and channels created by constructing wholly separate, parallel facilities.

3. Discussion

21. After reviewing the legislative intent of Congress, and Commission and court precedent, we find that, to date, the Commission has not clearly defined ''extension of any line'' for purposes of Section 214. We, therefore, take this opportunity to seek comment on an appropriate definition. We tentatively conclude that an ''extension of a line'' is a line that allows the carrier to expand its service into geographic territory that it is eligible to serve, but that its network does not currently reach. With respect to projects that increase the capabilities of a carrier's existing network within an area it already serves, we tentatively conclude, based on a review of Commission precedent, that we should consider the resulting additional channels of communication to be ''new lines.'' We seek comment on this tentative conclusion, including comment on whether such upgrades should be treated instead as ''extensions.''

22. Alternately, we seek comment on whether, consistent with the Surface Transportation Board's treatment of ''double-tracking'' of rail lines, we should treat in-region increases in network capacity as ''improvements,'' outside the scope of Section 214. We seek specific comment on whether such treatment would be: (1) consistent with the statutory definition of a line as ''any channel of communication''; and (2) appropriate in light of the original intent of Section 214 to inhibit network ''gold-plating'' and the intent of the 1996 Act to promote competition by removing outdated barriers to entry in telecommunications markets.

23. *Extension Within the United States:* The definition of extension we have proposed exempts carriers from their obligation to obtain Section 214 authorization for expansions into additional domestic territory that they are otherwise eligible to serve. By relieving carriers of the burden of obtaining Section 214 approval for such projects, the definition would encourage carriers to expand their service areas into territory served by other carriers. We tentatively conclude that this definition would be consistent with the natural meaning of ''extend,'' as well as court and Commission precedent because it would exempt from Section 214 certification lines that ''expand the area or scope of'' a carrier's network. In addition, by exempting carriers' efforts to expand their facilities or services beyond the areas in which they are currently providing service, we believe that we would encourage the development of competition, consistent with the 1996 Act.

24. Consistent with the original purpose underlying Section 214, under our proposed definition, the Commission would retain jurisdiction over the construction of most in-region facilities. These projects take place within the area where there is the potential danger that a dominant carrier

will create needlessly duplicative facilities, the cost of which may be borne by captive telephone ratepayers. These potential dangers are especially great in the case of a LEC subject to rate-of-return regulation, which would be in a position to recover the cost of additional, unnecessary facilities from its ratepayers. We note, however, that our proposed definition would allow even a rate-of-return LEC to extend lines into additional geographic territory without specific Section 214 certification. We tentatively conclude that our existing accounting and cost allocation rules would help protect such a LEC's captive ratepayers from bearing the cost of such extensions, even if the LEC sought to build unneeded, out-of-region facilities. We request comment on this tentative conclusion.

25. Under our proposed definition, a carrier would be able to extend its lines only into additional domestic territory that it is eligible to serve under the Communications Act, as amended, and the Commission's rules and policies. In this respect, we note that most LECs (*i.e.*, all except the BOCs and GTE) were eligible to immediately provide interstate, interexchange services, consistent with the policies stated in the *Competitive Carrier Proceeding,* even before the 1996 Act became law. Under the 1996 Act, the Bell Operating Companies (''BOCs'') are authorized to provide out-of-region, interLATA service, and are eligible to provide in-region, interLATA service once they comply with the requirements imposed by new Sections 271 and 272. In addition, the 1996 Act replaced the GTE Consent Decree, which barred GTE from providing domestic, interstate, interexchange services; GTE may now do so consistent with the requirements of the Communications Act, as amended, and the Commission's rules and policies. Furthermore, all domestic carriers are eligible to provide exchange telephone service on a competitive basis. Some carriers are already providing such competitive local exchange service, and others may soon begin to do so, either on a facilities or resale basis. Congress intended the 1996 Act to encourage such competitive activities and we believe that the elimination of carriers' Section 214 obligations will further that intent. We tentatively conclude, therefore, that a domestic carrier wishing to serve new territory may extend its lines to do so without obtaining Section 214 authority, as long as the carrier obtains any other regulatory approvals that may still be required.

26. We recognize that this proposed definition of ''extension'' may produce some anomalous results. For example, a domestic IXC that does not currently have facilities that serve the entire geographic United States would be able to extend lines into additional territory consistent with the policies developed in the *Competitive Carrier* proceeding. However, an IXC that already serves the entire domestic United States with its own facilities would not be permitted, under our proposed definition, to extend its lines without obtaining Section 214 approval. We note, however, that there should be no substantial or practical impact on the domestic IXCs because, as discussed more fully below, we tentatively conclude that we should forbear from applying Section 214 and our Part 63 rules to non-dominant IXCs under Section 401 of the 1996 Act. We believe our proposed definition would create fewer anomalies overall than other possible definitions. In addition, we are confident that we will be able to correct such results through the exercise of our forbearance authority.

27. Under our tentative definition, once a carrier has expanded into new territory by ''extending'' its lines, additional activities within that territory seemingly would create ''new'' lines. In the *Competitive Carrier* proceeding, we determined that LECs could offer interstate, interexchange services on a non-dominant basis through an affiliate that met certain separation requirements; a LEC offering such services directly, by contrast, would be regulated as dominant. We recently extended this regulatory regime, on a temporary basis, to BOC provision of out-of-region, interLATA telecommunications services to provide interim protection from potential cost-shifting and anticompetitive conduct by the BOCs. While we have recently sought comment on whether it might be appropriate at some future date to modify or eliminate the separation requirements thus imposed, those requirements remain in place. In this proceeding, while we propose forbearance from Section 214 regulation for most LECs and all non-dominant carriers, as discussed below, we also propose that rate-of-return LECs remain subject to streamlined Section 214 regulation. Accordingly, rate-of-return LECs might find themselves subject to Section 214 certification requirements only for their second and subsequent lines into a given territory. We seek specific comment on these and other potential anomalies, including possible remedies.

28. Accordingly, we ask parties to comment on whether our proposed definition of line ''extensions,'' as it applies to all common carriers, whether they are IXCs, LECs, resellers, international carriers (discussed below), or others, satisfies the goals of Section 402(b)(2)(A). We seek specific discussion of our proposed definition's impact on particular projects subject to Section 214 regulation or the Section 402(b)(2)(A) exemption. In addition, commenters advocating revisions to our definition should propose specific language and discuss the basis for their proposals in light of the dictionary meanings, legislative history, and precedents discussed above.

29. Our proposed definition would exclude all carrier lines in areas within which the carrier is currently providing service. Accordingly, under our tentative conclusion in paragraph 21, above, channels of communication derived from in-region network upgrades would be treated as ''new lines.'' Such treatment would be consistent with past Commission characterizations of such lines. Furthermore, it would preserve the Commission's Section 214 authority with respect to in-region network upgrades by dominant carriers. In-region network upgrades by dominant carriers present the greatest opportunities to duplicate facilities unnecessarily, with consequently higher charges to ratepayers. Although we expect the development of competition to lessen those opportunities, we tentatively conclude that, currently, continued Commission regulation of such projects remains consistent with the goals of Section 214. As with the IXCs, however, we tentatively conclude that the full exercise of this authority is not necessary to protect ratepayers in every instance. Specifically, as discussed more fully below, we tentatively conclude that we should forbear from regulating the in-region activities of LECs that are subject to price cap regulation (''price cap carriers''), LECs that are considered average schedule companies, and competitive access providers (''CAPs'').

30. *International Lines:* We have provided preliminary guidance with respect to the definition of a line ''extension'' in the international context by stating, with respect to Section 402(b)(2)(A), that:

We do not view this provision as applicable to our authority to require common carriers to obtain Section 214 authority to acquire, operate, or resell facilities or services to serve individual countries. When we grant a carrier initial authority to acquire and operate facilities to a particular country, we do not grant that carrier authority for an ''extension of lines'' within the meaning of Section 214 * * * but instead grant that carrier authority to acquire and operate new lines to a particular geographic market.

31. Because the initiation of service to a new foreign point raises an array of issues not associated with the expansion of service within the domestic United States, we tentatively conclude that such initiation of service involves the construction, acquisition, or operation of ''new lines.'' This definition would be consistent with the meaning of ''new,'' which, in contrast to an ''extension,'' implies something ''unfamiliar'' or ''novel.'' We seek comment on this tentative conclusion.

32. Within the international context, we have stated that ''the international geographic market exists in terms of separate and distinct areas determined by national borders.'' Therefore, we tentatively conclude that the initiation of service to a new country is an action fundamentally different in character from the extension of facilities domestically, where carriers have much greater economic and operational flexibility. Carrier initiation of international service raises legal, economic, policy, and facility-specific issues different from those raised by the provision of domestic service. The Commission, for example, recently adopted a route-by-route approach to reviewing foreign carrier Section 214 applications to provide international services. Where a foreign carrier holds market power in a proposed destination market, the Commission examines whether effective competitive opportunities exist for U.S. carriers in that market. This allows us to address the potential anticompetitive effects of permitting a foreign carrier to provide U.S. telecommunications services between the United States and a country where it has market power. The legal, economic, policy, and facility-specific issues involved in service to particular foreign points require individual consideration, as well as consultation with the Executive Branch.

33. Accordingly, when we grant a carrier authority to acquire and operate facilities to a particular country, we tentatively conclude that we do not grant that carrier authority to ''extend'' lines within the meaning of Section 214 and Section 402(b)(2)(A), but instead grant that carrier authority to acquire and operate new lines. International carriers are not eligible to initiate service to new international points until they receive specific Section 214 authorization to do so. We tentatively conclude, therefore, that few carrier activities involving the provision of international services can properly be considered line ''extensions'' within the meaning of Section 214 or Section 402(b)(2)(A). Accordingly, under our proposed definition, virtually all international lines must be classified as ''new.'' We seek comment on this tentative conclusion.

34. Our proposed definition also would exclude projects that increase a carrier's capacity to carry traffic between the United States and another country it already serves. Such projects do not involve the expansion of service into any new geographic territory. Accordingly, we tentatively conclude that such capacity increases constitute ''new'' lines subject to Section 214 regulation, consistent with our characterization of domestic carrier in-region network upgrades. Nevertheless, we seek specific comment on the impact of our decision on all international carrier projects.

35. *Other Options:* We have tentatively concluded that an ''extension'' of a carrier's line should be defined as a line that allows the carrier to expand its service into geographic territory that it is eligible to serve, but that its network does not currently reach. We seek comment, however, on other alternatives, such as defining ''extension of any line'' to include:

(i) any line, some part of which crosses a state boundary, consistent with the language of *General Tel. Co. of California*. Lines that are wholly within a single state, but that nevertheless form part of an interstate channel of communication would be excluded from this definition.

(ii) any augmentation of lines in a carrier's network, heretofore subject to Section 214 certification, without distinguishing ''new'' lines from ''extensions.'' Such a definition would be consistent with the Commission's historic treatment of ''new'' lines and ''extensions'' as one uniform group, without subdivision. Under such a definition, the Commission would exempt all additions to a carrier's network from the requirements of Section 214. Such a definition would subject to Section 214 review only discontinuance, reduction, or impairment of service.

(iii) any channel of communication that is not created with a physically new facility. Under such a definition, capacity increases in existing facilities would be considered extensions, while the installation of physically new lines would remain subject to Section 214 certification. Such a definition potentially could influence carrier business decisions, because physically new facilities would be subject to a greater regulatory burden than capacity increases in existing facilities.

(iv) any line that connects to a carrier's network. Such a definition would include any line that augments a carrier's facilities by connecting to them. It would exclude augmentations that do not directly connect to the carrier's existing lines, as well as any discontinuance, reduction, or impairment of service.

We seek comment on these alternatives and on whether another definition would better address the considerations apparent in the language of Sections 214 and Section 402(b)(2)(A), the legislative history, and judicial and Commission precedents.

36. We note that carrier activities constituting the ''extension'' of a line, as defined in the course of this proceeding, are exempt from the requirements of Section 214 as of the date of enactment of the 1996 Act, February 8, 1996.

B. Section 214 Requirements for Price Cap Carriers, Average Schedule Carriers, and Domestic, Non-dominant Carriers

37. Under the definition of line ''extension'' proposed above, Section 402(b)(2)(A) of the 1996 Act preserves the Commission's Section 214 authority over telecommunications carriers seeking to construct, acquire, or operate new lines of communication, or engage in transmission over such lines. Consistent with the forbearance authority granted the Commission in Section 401 of the 1996 Act, however, and for the reasons stated herein, we propose in this notice to forbear from applying all Section 214 authorization requirements to LECs subject to price cap regulation (''price cap carriers''), to LECs that are average schedule companies, and to all domestic carriers classified as non-dominant, whether they are offering local or long distance services. Accordingly, we tentatively conclude that these carriers should no longer be required to obtain Section 214 authorization for the construction, acquisition, or operation of new lines between domestic points, or for transmission over such lines. In light of this proposal, we tentatively conclude that Section 63.07 of our rules should be repealed.

38. Section 401 amends Title I of the Communications Act of 1934 by adding a new Section 10. Section 10(a) directs the Commission to forbear from enforcing a regulation or provision of the Communications Act when: (1) Enforcement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with a carrier or service

are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. Section 10(b) further instructs the Commission to consider whether forbearance will promote competitive market conditions and enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may provide the basis for the Commission's finding, pursuant to subsection 10(a)(3), that forbearance is in the public interest.

39. We tentatively conclude that, under the first prong of the three-part forbearance analysis set forth in Section 10(a), the imposition of Section 214 authorization requirements on price cap, average schedule, and non-dominant carriers is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with these carriers or their services are just, reasonable and not unreasonably discriminatory. This tentative conclusion is based primarily on the presumption that price cap and average schedule carriers, by virtue of the rate regulation schemes applied to each, are constrained in their ability to raise interstate telephone service rates. Non-dominant carriers, by virtue of facing competition in their service areas also are constrained in their ability to raise rates.

40. Price cap carriers are limited in their ability to realize a regulatory benefit from overinvesting in facilities because rates for interstate services are capped in accordance with preset formulas that account for inflation and productivity growth. By capping prices rather than carrier profits, price cap regulation discourages overinvestment in facilities and encourages carriers to lower costs and increase productivity. We recognize that, under the Commission's current price cap regulations, carriers may elect a ''sharing'' option, which could affect the rates charged for interstate services. In general, under our current interim LEC price cap rules, a BOC could select an X-factor option that requires it to share interstate earnings with its customers that exceed specified benchmarks and permits the BOC to make a low-end adjustment if interstate earnings fall below a specified floor. Therefore, price cap regulation of a monopoly carrier that has elected a sharing option may not eliminate entirely that carrier's incentive to invest in unnecessary facilities. Such ''gold-plating'' activities may have the potential to increase the carrier's costs and, therefore, to reduce the carrier's obligation to share its regulated profits with its customers.

41. Although price-cap regulation that includes a sharing option preserves some of the incentives toward ''gold-plating'' that accompany rate-of-return regulation, we believe that all forms of price cap regulation nevertheless reduce these incentives. Price cap carriers incur sharing obligations on a sliding scale once their profits exceed certain levels; only when the carrier enters its ''100% sharing'' zone would it reap the full benefit of an increase in its costs. Virtually all of the price-cap carriers have adopted the ''no-sharing'' X-factor. This fact seems to indicate strongly that, in general, the benefits associated with the no-sharing option exceed the benefits of adopting a sharing option and strategically overinvesting in facilities. Moreover, we expect that growth in competition for local exchange and interstate access will provide additional incentives for the price-cap LECs to increase their efficiency. Therefore, whether a price cap carrier elects a ''sharing'' or ''no sharing'' option, we tentatively conclude that additional regulation under Section 214 is not required to protect telephone service ratepayers adequately against potentially higher rates resulting from investment in unnecessary facilities. Accordingly, we tentatively conclude that ''sharing'' and ''no sharing'' price cap carriers should be treated alike for purposes of applying forbearance from the Section 214 authorization requirements. We seek comment on this tentative conclusion, and request that commenters address whether we should distinguish price cap carriers that have elected an X-factor with no sharing requirement from other price cap carriers. We seek specific comment on whether we should apply the streamlined Section 214 procedures that we propose for rate-of-return carriers to price cap carriers that have a sharing obligation.

42. Similarly, average schedule companies are compensated for interstate telephone services through access service rates developed by the National Exchange Carrier Association (''NECA'') on the basis of industry-wide averages. This constraint on the ability of average schedule carriers to raise interstate telephone service rates reduces the incentive that these carriers otherwise might have to overinvest in facilities. Accordingly, we tentatively conclude that the first prong of the Section 10 forbearance test is satisfied for carriers that are average schedule companies.

43. In the Competitive Carrier proceeding, the Commission granted blanket Section 214 authority to non-dominant domestic carriers based on its finding that, in a competitive environment, market forces could protect the public from unreasonably high rates and undue discrimination. More recently, the Commission has reaffirmed its view that marketplace forces can replace regulation and make burdensome regulatory requirements unnecessary for both carriers and the Commission. Based on our continuing belief that market forces limit the ability of non-dominant carriers to recover the cost of unnecessary facilities from telephone service ratepayers, we propose to forbear from applying the Section 214 authorization requirements to all domestic facilities of domestic non-dominant carriers. Such forbearance would be consistent with our decision, under the forbearance provisions of the 1996 Act, no longer to require or to allow nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange services.

44. As discussed above, Section 214 review was intended to protect against duplicative and wasteful investments that could harm telephone service ratepayers. Our concern is that interstate telephone ratepayers not pay for such investments through increased rates for telephone service, particularly when carriers' rates are based on their costs plus a reasonable rate-of-return above those costs. Accordingly, our tentative finding that price cap, average schedule, and non-dominant carriers need not be required to obtain Section 214 authorizations is consistent with the rationale for Section 214 review. Specific Section 214 review of these carriers' investments in facilities is not necessary to ensure that their charges are just and reasonable because competitive forces or other regulatory constraints on prices already ensure that these classes of carriers have little economic incentive or ability to invest in wasteful or duplicative facilities.

45. We also tentatively conclude that, under the first prong of the Section 10(a) forbearance analysis, the imposition of Section 214 authorization requirements on price cap, average schedule, and domestic non-dominant carriers is not necessary to prevent those carriers from engaging in anticompetitive or discriminatory practices. The Section 214 certification process is not designed to prevent such abusive practices and, furthermore, the Commission has in place rules specifically addressing anticompetitive and discriminatory practices. We retain the ability to

reimpose Section 214 requirements should it become necessary to ensure that carrier rates and practices are just, reasonable, and nondiscriminatory.

46. We tentatively conclude that, under the second prong of the Section 10(a) forbearance analysis, imposition of the Section 214 authorization requirements on price cap (sharing and non-sharing), average schedule, and domestic non-dominant carriers is not necessary to protect consumers. Section 214 was originally enacted to protect telephone ratepayers. The rate regulation scheme applied to price cap and average schedule carriers, and market forces acting on domestic nondominant carriers, however, minimize the risk that telephone ratepayers will pay for wasteful investments by these carriers. We also tentatively find that forbearance from imposing Section 214 authorization requirements will benefit consumers because it will reduce the regulatory costs and delay currently imposed on carriers seeking to introduce new services. Accordingly, forbearance treatment should promote the ability of carriers to satisfy consumer demands more efficiently and at lower rates.

47. We also seek comment on whether there are other factors, apart from rate-of-return regulation or sharing obligations, that may affect the potential for duplicative and wasteful investments. In particular, we seek comment on the extent to which the rules and policies advocated by LECs in the appeal of our interconnection order and in the universal service proceeding could affect the incentives of carriers to make investments that are inconsistent with the statutory objective(s) of Section 214.

48. We tentatively conclude that, under the final prong of the Section 10(a) forbearance analysis, forbearance is in the public interest because it will promote competitive market conditions and enhance competition among providers of telecommunications services. The Commission's Section 214 review process currently appears to impose regulatory barriers to the entry of new carriers and the creation or expansion of facilities by all carriers because carriers proposing projects that do not fall within one of the Commission's blanket authority rules must engage in a potentially lengthy Commission review of their proposals and disclose potentially competitively sensitive information to rivals. By reducing the regulatory burden imposed by Section 214, we would encourage the development of competition by facilitating market-driven network expansion and reducing the costs of obtaining regulatory approval. Accordingly, we tentatively conclude that forbearance from applying the Section 214 authorization requirements to price cap, average schedule, and domestic non-dominant carriers would stimulate competition by facilitating entry of new carriers, price decreases, and improved offerings. Accordingly, we tentatively conclude, pursuant to Sections 10(a)(3) and 10(b), that the forbearance policy proposed herein is in the public interest.

49. We seek comment on the forbearance policy proposed above. We also seek comment on the advantages and disadvantages of alternative reform proposals including, for example, streamlining our Section 214 application procedures with respect to one or more of these classes of carriers instead of forbearing from applying the Section 214 authorization requirements. In addition, we seek comment on any procedures which may be necessary with respect to Section 214 in the event a carrier subject to forbearance treatment changes its cost accounting method and, as a result, no longer falls within a forborne class of carriers.

50. In the *Competitive Carrier* proceeding, the Commission found, for purposes of assessing the market power of interexchange carriers covered by that proceeding, that: ''(1) interstate, domestic, interexchange telecommunications services comprise the relevant product market, and (2) the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) comprises the relevant geographic market for this product, with no relevant submarkets.''

51. The Commission recently tentatively concluded that, under certain circumstances, narrower market definitions may provide a more refined analytical tool for assessing market power. Specifically, its tentative conclusions were: (1) to define as a ''relevant product market an interstate, interexchange service for which there are no close substitutes or a group of services that are close substitutes for each other but for which there are no other close substitutes''; and (2) to define the ''relevant geographic market for interstate, interexchange services as all calls (in the relevant product market) between two particular points.'' Although the Commission proposed treating ''interstate, interexchange calling generally as one national market,'' the Commission also proposed to examine credible evidence of market power in particular product or point-to-point markets. We seek comment on how revisions to the Commission's assessment of market power in these differing contexts may affect our proposal to forbear from Section 214 regulation of nondominant carriers, if we were to adopt such revisions. In addition, we seek specific comment on the regulation under section 214 of a carrier that might be regulated as dominant in some product, geographic, or service markets, but nondominant in others.

C. Section 214 Requirements for Domestic, Dominant, Rate-of-Return Carriers

1. Streamlined Application Procedures

52. In this notice, we propose to amend Section 63.01 of our rules to streamline Section 214 filing procedures for domestic carriers that we tentatively conclude should remain subject to the Section 214 authorization requirements. We propose to limit this category of carriers to domestic dominant carriers that are subject to rate-of-return regulation (''dominant rate-of-return carriers''). We propose to retain a Section 214 authorization requirement for these carriers given our tentative conclusion that the rate regulation method applied to them gives them an incentive to overinvest in facilities and because they lack external constraints on their ability to pass such costs on to telephone service ratepayers. As recently stated by the Commission, ''[w]e are mindful of our statutory obligations under the Communications Act of 1934 to guard against abuses of market power in situations where effective competition does not yet exist. We meet these obligations through our Section 214 authorization process and apply dominant carrier regulation and other safeguards where circumstances warrant.'' Since dominant rate-of-return carriers have both the incentive and the opportunity to recover the cost of duplicative or wasteful facilities directly from telephone service ratepayers, we believe that Section 214 review remains warranted for such carriers' proposals to construct, acquire, or operate new or additional domestic lines.

53. Nevertheless, we propose to amend Part 63 of our rules to reduce the burden on carriers required to file Section 214 applications. Specifically, we propose to streamline the Section 63.01 filing requirements by eliminating the filing of unnecessary information and providing for automatic approval of Section 214 applications thirty-one days after the Commission issues public notice that the application has been accepted for filing, unless (1) the Common Carrier Bureau (the ''Bureau'') notifies the applicant within that period

that the grant will not be automatically effective; or (2) within thirty days following the issuance of public notice a party both files an opposition to the application with the Commission and serves a copy on the applicant.

54. As reflected in the attached appendix of proposed rule amendments, we propose to amend Section 63.01 to lessen the burden on carriers and to require carriers to file only the following information: (a) name and address of applicant; (b) state of incorporation of corporate applicant; (c) information identifying the officer to whom correspondence may be addressed; (d) points between which proposed facilities are to be located; (e) a brief description of the facilities to be added and of the applicant's existing facilities between these points; (f) an affidavit, executed under penalty of perjury: (1) that there is a public need for proposed facilities; and (2) that the facilities are economically justified; and (g) a statement whether authorization of facilities is categorically excluded from Section 1.1306 of the Commission's rules.

55. We propose to eliminate from our current Section 63.01 filing requirements information concerning: (a) whether the carrier is or will become a carrier subject to Section 214 of the Communications Act; (b) whether the facilities will be used to extend communication services into territory at present not directly served by the applicant or to supplement existing facilities of the applicant; (c) the types of services to be provided over the proposed facilities; (d) the applicant's present and estimated future facilities requirements; (e) the map or sketch showing the proposed facilities; (f) a description of the manner and means by which other interstate and foreign communications services of a similar character are now being rendered by the applicant and others in the area to be served by the proposed facilities; (g) proposed tariff charges and regulations for domestic applications; (h) a statement of the accounting proposed to be performed in connection with the project; and (i) whether the carrier has an affiliation with a foreign carrier. We tentatively conclude that all of this information is either collected elsewhere by the Commission, unnecessary, confusing in light of the provisions of Section 402(b)(2)(A), or no longer of decisional significance to the Commission.

56. Our proposed streamlined application procedure also would revise the current requirement that a carrier provide a summary of the factors showing the public need for the proposed facility and a detailed economic justification. We propose to allow a carrier instead to certify that there is a public need for its proposed facilities and that they are economically justified. The filing of detailed statements setting forth this information is burdensome on carriers and, in recent years, it has been our experience that few (if any) carriers have filed Section 214 applications proposing projects that do not meet these requirements. Nevertheless, we retain the authority to request from a carrier this or any other detailed information our review of a specific application may require.

57. We also propose automatic approval of Section 214 applications on the thirty-first day following the date on which each application is placed on public notice, unless the Common Carrier Bureau notifies the applicant that the grant will not be automatically effective, or another party files an opposition with the Commission and serves the opposition on the applicant. If the Bureau so notifies the applicant, or an opposition is filed and served, within 30 days, final action by the Bureau would be taken within 90 days of the expiration of the 30 day period (i.e., within 120 days of the issuance of public notice). We seek comment on these proposed Part 63 rule amendments and on alternative proposals to streamline the Section 214 approval process.

58. Although we have tentatively concluded that streamlined regulation will be appropriate with respect to dominant rate-of-return carriers, we recognize that the firms remaining under rate of return regulation are generally small (accounting, in the aggregate, for less than approximately 2% of interstate revenues), and that, as a practical matter, few Section 214 applications from such firms have ever been challenged or rejected. Accordingly, we seek comment on whether, as with the other types of carriers discussed above, the Commission should forbear from regulating these small carriers under Section 214 altogether.

2. Blanket Authority for Small Projects

59. Current Commission rules allow carriers to file streamlined, informal applications for Section 214 certification for certain small, in-region projects with a cost of less than $2,000,000 each or an annual rental of less than $500,000 each. In recent years, it has been our experience that few applications have been filed under this section and those few have not been contested, but instead have been deemed approved twenty one days after the Commission issues public notice that the application has been accepted for filing. In addition, based on the size of the projects involved, we believe that project-specific applications are not required to protect ratepayers from unnecessary rate increases. Accordingly, we tentatively conclude that we should grant blanket authority for small projects involving the construction, operation, or acquisition of new lines, or transmission over such lines.

60. We believe that it would be difficult for a carrier to engage in any substantial wasteful duplication of facilities or to raise its rates significantly based on projects undertaken pursuant to this rule. Not only are the dollar amounts involved small, but these projects require investment in facilities that, as a general matter, must be amortized over long periods of time, with the result that even a rate-of-return carrier could include only a fraction of the total outlay in its cost data for a single accounting period. As the rule is currently written, however, a carrier may engage in as many projects as it deems appropriate under this rule, subject to the approval of the Commission under the streamlined provisions of Section 63.03. Therefore, we tentatively conclude that a grant of blanket authority on any per-project basis would leave no meaningful check on the ability of a rate-of-return carrier to construct facilities at will, with the possible result that rates will be raised unnecessarily. Instead, we propose to grant blanket authority for carriers to construct, operate, or acquire new lines, or engage in transmission over such lines, subject to an annual cap on spending.

61. In developing an appropriate dollar amount for such an annual cap, we take initial note of the current $2,000,000 per-project limit under our streamlined rule. We propose that one such project could be undertaken by a carrier on average every two months without any significant adverse effect on ratepayers. However, we are also aware that there are great size differences between the largest and smallest rate-of-return carriers. Accordingly, for such large carriers, we propose an alternate annual percentage cap. Specifically, we propose that a carrier could increase the total book value of its lines by up to 10% in any given year without any significant adverse effects on ratepayers. Because these investments are typically amortized over long periods of time, any potential rate increase from such projects would necessarily be small.

62. In sum, we propose to replace the current $2,000,000 per-project cap to allow carriers to engage in projects that,

in the aggregate, either: (1) Have a total annual cost of no more than $12,000,000 or an annual rental of no more than $3,000,000; or (2) increase the total book value of the carrier's lines by not more than 10%. Projects in excess of this annual cap would be subject to the streamlined application procedures proposed above. We seek comment on this proposal, including specific comment on several issues. We request that commenters discuss: (a) Whether we should forbear from imposing Section 214 regulation on these projects, including specific reference to the forbearance criteria in the 1996 Act; (b) whether we should subject these projects to the streamlined regulation proposed above; and (c) whether the proposed cost limits are appropriate.

D. Reporting Requirements

1. Current Section 214 Reporting Requirements

63. In the past, the Commission has streamlined its Section 214 application process or granted blanket authorizations when it was able to conclude that review of all information required by Section 63.01 no longer was consistent with the public interest. In connection with such streamlining or blanket authorization, the Commission has imposed reporting obligations on carriers engaging in the activities covered by these streamlined filing requirements or blanket authorizations. Part 63 of our rules currently imposes two such reporting requirements. Section 63.03(e) of our rules requires annual reports from carriers that have obtained continuing authority to commence small projects within their existing service areas. Section 63.04(c) imposes a similar, semiannual, reporting requirement on those carriers that have obtained continuing authority to provide temporary or emergency service.

64. If, as discussed above, we adopt a policy of forbearance toward certain classes of carriers, then we tentatively conclude that those classes of carriers would not be subject to any Section 214 reporting requirements under the Commission's rules. In addition, we tentatively conclude that the reporting burden should be substantially reduced for carriers required to obtain Section 214 certification.

2. Elimination of Reports

65. We tentatively conclude that the Commission no longer needs to require carriers to file routinely the reports required under Sections 63.03(e) and 63.04(c) of our rules. In recent years, neither the public nor the Commission's staff has made significant use of the information provided in these reports. Under Section 63.03(e), carriers may request continuing authority to commence small projects to supplement existing facilities within the carrier's service area. Projects commenced under this authority must have a construction, installation, or acquisition cost of no more than $70,000 or an annual rental cost of no more than $14,000. Carriers subject to this requirement must file this report annually.

66. Under Section 63.04(c), carriers may request continuing authority to provide temporary or emergency service through the construction or installation of facilities for which the estimated construction, installation, and acquisition costs do not exceed $35,000 or an annual rental of $7000, as long as the project does not involve a ''major action'' under the Commission's environmental rules. Carriers that obtain such authority are required to file semiannual reports identifying the projects commenced over the preceding six months.

67. It would be extremely difficult for carriers to construct or acquire significantly wasteful, duplicative facilities covered by either Section 63.03 or 63.04 because of the relatively small cost of the projects covered by those sections. Instead of obligating carriers to file these reports, we propose to rely on the Commission's general authority under the Communications Act to obtain information from carriers in individual instances if the information becomes necessary for us to perform our regulatory duties. Parties requesting that the Commission retain these reporting requirements should explain clearly how these reports have benefitted members of the public in the past and how the reports would benefit the public in the future.

E. Section 214 Discontinuance Requirements

68. Section 214(a) requires carriers that discontinue, reduce, or impair service to a community to obtain from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected. In general, dominant carriers seeking Commission authority to discontinue, reduce, or impair service are required, pursuant to current Section 63.61 of our rules, to file a formal application with the Commission. Depending on the nature of the service for which authority to discontinue is sought, Section 63.62 of our rules instructs applicants with respect to the contents of particular applications. Upon reviewing an application for discontinuance authority, the Commission then issues a formal order granting or denying such authorization.

69. Under current Section 63.71 of our rules, non-dominant carriers seeking to reduce or discontinue service are required to notify all affected customers in writing of the planned discontinuance, reduction or impairment of service unless the Commission authorizes another form of notice in advance. Non-dominant carriers must also file with the Commission an application that includes a description and the date of the planned discontinuance, reduction or impairment, the geographic areas of service affected, the dates and method of notice given to customers, and any other information the Commission may require. The application is automatically granted on the thirty-first day after its filing with the Commission, unless the Commission notifies the applicant within that time that the grant will not automatically be effective.

70. The 1996 Act does not alter the Commission's authority under Section 214(a) with respect to discontinuances or reductions in services. We note, however, that carriers assume a certain amount of risk when entering a new geographic or product market. If regulatory requirements create significant barriers to exit, a carrier may be reluctant to accept potential risks and, as a result, may never enter the market. Accordingly, in order to further the 1996 Act's goal to promote competition, we seek in this proceeding to eliminate any unnecessary barriers to exit currently imposed by our rules. Specifically, we seek comment on whether the streamlined discontinuance procedures set forth in Section 63.71 of our rules, which currently apply only to domestic non-dominant carriers, should apply to all domestic common carriers. In doing so, we tentatively conclude that the streamlined procedures contained in Section 63.71 appear to strike a reasonable balance between protecting consumers and reducing unnecessary barriers to exit for all carriers, whether dominant or non-dominant. We seek comment on this tentative conclusion.

71. As local exchange markets becomes increasingly competitive, however, many currently dominant LECs may find themselves under increasing pressure to reduce or eliminate service in unprofitable areas. Therefore, although we propose to extend the applicability of Section 63.71 to domestic dominant carriers, we remain concerned that the relatively short advance notification period

provided under Section 63.71 might allow a dominant carrier to obtain automatic discontinuance authority even though it is the only carrier serving a particular community. In addition, we are mindful of the Commission's obligation under the new universal service provisions of the 1996 Act to order a common carrier, or carriers, to provide interstate telecommunications service to an unserved community, or portion thereof, that requests such service. At a minimum, therefore, we tentatively conclude that we should extend the advance notification period contained in Section 63.71 to 60 days with respect to domestic, dominant carriers, in the event that we do apply Section 63.71 to all domestic carriers. We seek comment on this tentative conclusion, including comment on (1) whether a 60 day advance notification period, in conjunction with the universal service support mechanisms recommended by the Joint Board and/or adopted by the Commission, will provide adequate incentives to carriers and protection to consumers; and (2) whether additional safeguards are necessary to protect consumers against discontinuance of service by dominant carriers; and (3) whether we should treat differently from all other carriers a dominant carrier that is either (a) the sole service provider in a particular community; or (b) relinquishing its designation as an eligible telecommunications carrier under Section 214(e)(4).

F. Technical Amendments to 47 CFR Part 63

72. In light of the rule amendments proposed above, we tentatively conclude that we should rewrite the entire text of Sections 63.01, 63.02, and 63.03 of our rules, to repeal Sections 63.06 and 63.07 of our rules, and to make technical, conforming amendments to Sections 63.04, 63.08, 63.52, 63.61, 63.62 and 63.71 of our rules. We seek comment on our proposal to repeal or amend these rule sections.

73. The 1996 Act also provides that ''a common carrier shall not be required to obtain a certificate under [S]ection 214 with respect to the establishment or operation of a system for the delivery of video programming.'' Accordingly, we propose an amendment to our rules, in the form of a new Section 63.01(b), to conform to this statutory mandate.

III. Procedural Matters

A. Ex Parte Presentations

74. 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.

B. Regulatory Flexibility Act Analysis

75. We certify that the Regulatory Flexibility Act of 1980 is not applicable to this rulemaking 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 because these rule changes would lessen, not increase, the regulatory burden on small businesses. 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 605(b) of the Regulatory Flexibility Act.

C. Initial Paperwork Reduction Act Analysis

76. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

77. In addition to filing comments with the Secretary, as detailed below, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via the Internet to fain__t@al.eop.gov.

D. Comment Filing Procedures

78. Pursuant to applicable rules set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before February 24, 1997, and reply comments on or before March 17, 1997, with the reference number ''CC Docket 9–11'' on each document. To file formally in this proceeding, commenters and reply commenters must file an original and six copies of all comments, reply comments, and supporting comments. Commenters and reply commenters wishing each Commissioner to receive a personal copy of their comments must file an original and eleven copies. Comments and reply comments must comply with Section 1.49 and all other applicable sections of the Commission's rules. However, we require here that a summary be included with all comments, regardless of length. All comments must 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 the Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Suite 235, Washington, D.C. 20554. Parties must also file one copy of any documents filed in this docket with the Commission's duplicating contractor, International Transcription Services, Inc. (''ITS''), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (tel. 202–857–3800). 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. Copies of comments and reply comments will also be available through ITS.

79. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions are in addition to, and not a substitute for, the formal filing requirements addressed above. Parties submitting diskettes should submit them to Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Suite 235, Washington, D.C. 20554. Diskette submissions 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 (comments or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

IV. Ordering Clauses

80. Accordingly, *it is hereby ordered* that, pursuant to Sections 1, 4(i), 4(j), 10, 214, 218, 254 and 571 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214, 218, 254 and 571, a NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

81. 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 Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 63

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

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–2568 Filed 1–31–97; 8:45 am]

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