dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports with and is consistent with the statutory authority and requirements set forth in the Electronic Freedom of Information Act Amendments of 1996 concerning time limits for responding to initial FOIA requests and administrative appeals with no issues of policy or discretion. Accordingly, opportunity for prior public comment is unnecessary and contrary to the public interest, and we are issuing this revised regulation as a final rule.

List of Subjects in 41 CFR Part 105–60

Freedom of information.

For the reasons set out in the preamble, 41 CFR Part 105–60 is amended as follows:

PART 105–60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

1. The authority citation for 41 CFR Part 105–60 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 40 U.S.C. 486(c).

Subpart 105–60.4—Described Records

2. Sections 105–60.402, 105–60.402–1, and 105–60.402–2 are revised to read as follows:

§ 105–60.402 Procedures for making records available.

Sections 105–60.402–1 and 105–60.402–2 set forth initial procedures for making records available when they are requested, including administrative procedures to be exhausted prior to seeking judicial review by an appropriate United States District Court.

§ 105–60.402–1 Submission of requests.

For records located in the GSA Central Office, the requester must submit a request in writing to the GSA FOIA Officer, General Services Administration (CAI), 1800 F Street, NW., Washington, DC 20405. Requesters may FAX requests to (202) 501–2727, or submit a request by e-mail to gsa.foi@gsa.gov. For records located in the Office of Inspector General, the requester must submit a request to the FOIA Officer, Office of Inspector General, General Services Administration, 1800 F Street NW., Room 5324, Washington, DC 20405. For records located in the GSA regional offices, the requester must submit a request to the FOIA Officer for the relevant region, at the address listed in § 105–60.303(a). Requests should include the words ''Freedom of Information Act Request'' prominently marked on both the face of the request letter and the envelope. The 20-workday time limit for agency decisions set forth in § 105–60.402–2 begins with receipt of a request in the office of the official identified in this section, unless the provisions under §§ 105–60.305–8 and 105–60.305–12(d) apply. Failure to include the words ''Freedom of Information Act Request'' or to submit a request to the official identified in this section will result in processing delays. A requester with questions concerning a FOIA request should contact the GSA FOIA Office, General Services Administration (CAI), 1800 F Street, NW., Washington, DC 20405, (202) 501–2691.

§ 105–60.402–2 Response to initial requests.

GSA will respond to an initial FOIA request that reasonably describes requested records, including a fee waiver request, within 20 workdays (that is, excluding Saturdays, Sundays, and legal holidays) after receipt of a request by the office of the appropriate official specified in § 105–60.402–1. This letter will provide the agency's decision with respect to disclosure or nondisclosure of the requested records, or, if appropriate, a decision on a request for a fee waiver. If the records to be disclosed are not provided with the initial letter, the records will be sent as soon as possible thereafter. In unusual circumstances, as described in § 105–60.404, GSA will inform the requester of the agency's need to take an extension of time, not to exceed an additional 10 workdays.

Dated: November 24, 1997.

David J. Barram,

Administrator.

[FR Doc. 97–31489 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43, 63, and 64

[IB Docket No. 97–142, FCC 97–398]

Foreign Participation in the U.S. Telecommunications Market

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On November 25, 1997, the Federal Communications Commission adopted a Report and Order that creates a new regulatory framework for international telecommunications. This action is a result of the recent World Trade Organization agreement on basic telecommunications services recently concluded wherein 69 countries, including the United States and virtually all of its major trading partners, agreed to open their markets for basic telecommunications services to competition from foreign carriers. Due to these changed circumstances, the Commission initiated a proceeding to revisit its rules governing foreign participation in the U.S. telecommunications market. In addition, the Commission's order addresses related issues raised in petitions for reconsideration of the Foreign Carrier Entry Order. The new rules will have significant benefits for consumers. Entry by foreign suppliers of telecommunications services will stimulate the U.S. market for international services, creating incentives for carriers to offer existing services at lower prices and adopt innovative new services to attract residential and small business customers. Further opening the U.S. market to foreign carrier entry, along with U.S. carrier entry into foreign markets, will allow carriers to capitalize on newly found efficiencies by offering one-stop shopping, which allows customers to have a single service provider in multiple markets, thereby reducing administrative costs to users.

This final rule contains information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public and other Federal agencies are invited to comment on the information collections contained in the final rule.

DATES: The amendments to §§ 43.51(d) and 64.1001(b) are effective January 8, 1998. All other regulations contain information collection requirements and are not effective until approved by the Office of Management and Budget (OMB), subject to 5 U.S.C. § 801(a)(3). A document announcing the effective date of these regulations will be published in the **Federal Register**.

The agency reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998. If these final rules are postponed, the agency will give timely notice in the **Federal Register**.

Written comments by the public on the information collection requirements are due February 9, 1998.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Douglas A. Klein, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–0424; Susan O'Connell, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1484. For additional information concerning the information collections contained in this Order contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. On June 4, 1997, the Commission released a Notice of Proposed Rulemaking in the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97–142 (62 FR 32966, June 17, 1997). The Notice proposed changes to the rules and policies governing foreign participation in the U.S. market for basic telecommunications services that had been previously adopted by the Commission in the *Foreign Carrier Entry* proceeding. The Commission initiated this proceeding to consider more appropriate rules in the liberalized competitive environment that will exist when the recent World Trade Organization (WTO) agreement on basic telecommunications services takes effect on January 1, 1998. The WTO agreement was concluded on February 15, 1997, when 69 countries, including the United States and virtually all of its major trading partners, agreed to open their markets for basic telecommunications services to competition from foreign carriers. This agreement covers 95 percent of the global market for basic telecommunications services. Sixty-five of these countries, including the United States, have committed to enforce fair rules of competition for basic telecommunications services that are modeled on U.S. law and regulations. Fifty-two of these countries, which account for approximately 90 percent of telecommunications revenues in WTO Member countries, have granted market access for international services. Thus, most of the world's major trading nations have made binding commitments to transition rapidly from monopoly provision of basic telecommunications services to open entry and procompetitive regulation of these services.

2. The order removes the effective competitive opportunities (ECO) test and replaces it with an open entry standard. In its *Foreign Carrier Entry Order,* the Commission adopted the ECO test as part of an overall public interest analysis for both international Section 214 authorizations and indirect foreign ownership of common carrier radio licenses under Section 310(b)(4). (*See* 60 FR 67332, December 29, 1995.) The Commission replaces the ECO test with a rebuttable presumption that applications for Section 214 authority from carriers from WTO countries do not pose concerns that would justify denial of an application on competitive grounds. The Commission also adopts a rebuttable presumption that WTO country applicants filing cable landing license applications, as well as applications to exceed the 25 percent foreign ownership benchmark in a common carrier radio licensee under Section 310(b)(4) of the Act, similarly do not pose such competitive concerns. The Commission finds that adopting a presumption in favor of entry will have significant public interest benefits.

3. The Commission recognizes, however, that in exceptional circumstances, entry into the U.S. market by an applicant affiliated with a foreign telecommunications carrier from a WTO country may pose competitive risks by virtue of the applicant's ability to exercise market power in a relevant foreign market. In such exceptional circumstances, the Commission will have the ability to attach additional conditions to or even deny a particular application. The Commission believes this approach provides protection against possible competitive harms while favoring neither foreign nor domestic applications.

4. The Commission also intends to apply its new open entry policies to cable landing license applicants. The Commission will continue, however, to analyze each application while seeking the approval of the State Department as required by Executive Order 10530. The Commission will no longer routinely impose a restriction on foreign ownership of cable landing stations. Should the Department of State, pursuant to Executive Order 10530, condition its approval of a particular cable landing license on such a restriction, the Commission will include a condition to that effect in the particular cable landing license. Any such restriction would be necessary to protect the national security of the United States.

5. In the *Foreign Carrier Entry Order*, the Commission adopted an ECO test as part of the public interest analysis under Section 310(b)(4) for applicants seeking authority to acquire greater than 25 percent indirect foreign ownership in a common carrier radio licensee. In this *Order,* the Commission replaces the current ECO test as applied to foreign investment from WTO Member countries in common carrier radio licenses with its new open entry policies. The Commission retains its general requirement that such licensees seek Commission approval before they accept foreign ownership that would put them over the 25 percent benchmark under Section 310(b)(4). The Commission will also continue to require licensees who have already received approval to exceed the 25 percent benchmark up to a certain level of indirect foreign ownership to seek further approval in order to increase that level of indirect foreign ownership. The Commission will continue to use the ''principal place of business'' test to determine the nationality or ''home market'' of foreign investors, but it will consider other means of determining an applicant's nationality if requested to do so by an applicant or if so advised by the Executive Branch.

6. The Commission will treat aeronautical enroute and aeronautical fixed services in the same manner as it treats common carrier services under Section 310(b)(4) and not apply an ECO test to indirect foreign ownership by entities from WTO Member countries. The Commission declines to address the rule limiting the number of aeronautical enroute licenses to one per location because the rule is beyond the scope of this proceeding. The Commission does, however, suggest several options for parties seeking to provide aeronautical services in the United States.

7. The Commission will continue to apply the ECO and equivalency tests to non-WTO Member countries. The Commission believes that continuing to apply the ECO test to non-WTO Member countries may encourage some of those countries to take unilateral or bilateral steps toward opening their markets to competition and may provide incentives for them to join the WTO. In the case of Section 214 applications to provide facilities-based, resold switched, and resold non-interconnected private line services, the Commission will continue to apply the ECO test as part of the public interest inquiry when presented with an application from a foreign carrier or a carrier affiliated with a foreign carrier where the foreign carrier is from a non-WTO Member country and has market power in the destination

market. The ECO test will be applied in a similar manner as part of the Commission's analysis under Section 2 of the Submarine Cable Landing License Act. The Commission will maintain the equivalency test as part of its standard for permitting the provision of switched services over private lines, whether facilities-based or through resale, for non-WTO Member countries. The ECO test will be applied as part of the Commission's general public interest analysis under Section 310(b)(4) regarding foreign investment by entities from non-WTO Member countries in common carrier radio licensees. The Commission will retain the ECO test as the threshold standard for permitting accounting rate flexibility with carriers from countries that are non-WTO Members.

8. In the Notice, the Commission noted that there were outstanding petitions for reconsideration of the *Foreign Carrier Entry Order*. In light of the WTO Agreement, the Commission requested comment on whether it should, for purposes of countries that are not WTO Members, apply the ECO test to U.S. carriers that own more than 25 percent of, or control, a foreign carrier from a non-WTO country. In the *Order*, the Commission recognizes that in the more liberalized environment that will result from the WTO Basic Telecom Agreement it will become increasingly difficult to define a ''U.S. carrier'' for the purpose of distinguishing between U.S.-carrier and foreign-carrier ownership of carriers. In addition, the GATS principle of National Treatment obligates the U.S. Government to treat investments by carriers from WTO Member countries no less favorably than it treats investments by domestic carriers. Thus, the Commission modifies its conclusion in the *Foreign Carrier Entry Order* and it will apply the ECO test where a U.S. carrier, or a company that owns more than 25 percent of a U.S. carrier, owns a controlling interest in a foreign carrier that has market power in a non-WTO country.

9. Given the new open entry approach, the Commission found it necessary to revise the competitive safeguards governing foreign-affiliated carrier provision of basic telecommunications services in the U.S. market and, more broadly, U.S. carrier dealings with foreign carriers. The Commission establishes a regulatory framework that modifies or eliminates rules that could hamper competition while balancing a need to monitor and detect anticompetitive behavior in the U.S. market without imposing burdensome regulations. For the purposes of applying the dominant carrier safeguards and No Special Concessions rule, the Commission creates a rebuttable presumption that a foreign carrier with less than 50 percent market share in each of the relevant markets on the foreign end of a U.S. international route lacks sufficient market power to affect competition adversely in the U.S. market. The Commission states that this presumption is rebuttable. Carriers may file petitions with the Commission seeking a declaratory ruling on whether a foreign carrier with a market share of 50 percent or more in any relevant market should be allowed to grant a special concession or be regulated as non-dominant because it lacks the ability to affect competition adversely in the U.S. market.

10. The Commission narrows its No Special Concessions rule to allow U.S. carriers to accept special concessions granted by foreign carriers that do not possess market power in a relevant foreign market without first obtaining specific approval from the Commission. The Commission concludes that its No Special Concessions rule should be limited to exclusive dealings involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of U.S. basic international service. The Commission did not adopt its proposal to specify a prohibition on special concessions involving the joint handling of basic U.S. traffic originating or terminating in third countries.

11. The Commission prohibits U.S. carriers from receiving proprietary or confidential information obtained by any foreign carrier in the course of its regular business dealings with a competing U.S. carrier, unless the competing U.S. carrier provides its specific permission in writing. Where a U.S. carrier is affiliated with a foreign carrier, the proprietary or confidential information of other U.S. carriers obtained by that foreign affiliate may not be used for any purpose other than for conducting the correspondent relationships with the carriers from whom the information was obtained. This rule will serve as a general requirement on all existing, pending, and future authorizations to provide U.S. international services.

12. The Commission concludes that safeguards are necessary given the privacy and anticompetitive effects that may result from the use of foreign-derived U.S. customer proprietary network information (CPNI). Under Section 222(a) of the Communications Act, every telecommunications carrier has a duty to protect the confidentiality of customer information. The Commission finds that if a U.S. carrier desires to make use of foreign-derived CPNI pertaining to a specific U.S. customer, it must first obtain appropriate consent from that customer. In doing so, the U.S. carrier also must notify the customer that he or she may require the U.S. carrier to disclose the CPNI to unaffiliated third parties upon written request by the customer. The Commission finds that these procedures will balance Section 222's privacy and competitive issues while not burdening or preventing U.S. carriers from offering one-stop shopping options.

13. The Commission declines to address issues raised by parties concerning the benchmark authorization conditions imposed on facilities-based carriers in the *Benchmarks Order* (62 FR 45758, August 29, 1997). The Commission will condition a carrier's facilities-based authorization to serve an affiliated market on the foreign carrier offering U.S.-licensed international carriers a settlement rate for the affiliated market at or below the relevant benchmark adopted in the *Benchmarks Order*.

14. The Commission addresses the issue of whether to apply its benchmark condition to authorizations to provide switched resale service from the United States to an affiliated market, which was not resolved in the *Benchmarks Order*. The Commission declines to apply the settlement rate benchmark condition to switched resale providers. The Commission finds that a switched reseller is less likely to attempt a predatory price squeeze. The Commission also finds here that it would be easier to detect a price squeeze in the switched resale context than in the facilities-based contest. The easier detection should deter switched resellers from attempting a price squeeze and will allow the Commission to take action in the event a carrier does attempt a price squeeze. The Commission will monitor the switched resale market carefully, and if it finds substantial evidence of anticompetitive behavior that causes harm to competition and consumers in the U.S. market, it may reconsider its decision not to apply the benchmark condition to the provision of switched resale. The Commission also adopts a quarterly traffic and revenue reporting requirement that applies to switched resellers that possess market power on the foreign end of the route and that have settlement rates with U.S. carriers.

15. The Commission adopts a dominant carrier regulatory framework aimed at detecting and deterring anticompetitive behavior in the U.S. market by foreign carriers and their

affiliated U.S. carriers. It will retain a single-tier dominant carrier regulatory approach and classify any U.S.-licensed carriers as dominant on a particular route if it is affiliated with a foreign carrier that possesses market power in a relevant market on the foreign end of that route. The Commission did not adopt its proposal to ban exclusive arrangements involving joint marketing, customer steering, and the use of foreign market telephone customer information. The Commission adopts its tentative conclusion to continue its current regulatory treatment of co-marketing and other non-equity business arrangements between U.S. carriers and their foreign counterparts that affect the provision of U.S. international services. The Commission also found that it would be an unnecessary burden to apply dominant classification to all non-equity arrangements absent a finding of substantial risk of competitive harm. The Commission also declined to adopt a filing requirement for non-equity business relationships.

16. The Commission adopts a number of competitive safeguards as part of its dominant carrier regulatory framework. Dominant foreign-affiliated carriers will be permitted to file tariffs on one day's notice with a presumption of lawfulness rather than the current fourteen-day advance notice. The Commission also eliminates its prior approval requirement for circuit additions and discontinuances on the dominant route. The Commission declines to adopt a quarterly notification of circuit additions or discontinuances requirement. If the Commission finds that an affiliated carrier is engaged in anticompetitive behavior, it may apply the prior approval requirement on that route.

17. Although the Commission currently has in place a number of safeguards to prevent anticompetitive behavior, it finds that a minimal level of structural separation for dominant carriers is necessary. The Commission will require a foreign-affiliated U.S. international carrier regulated as dominant to provide service in the U.S. market through a corporation that is separate from the foreign affiliate, maintain separate books of account, and not jointly own switching and transmission facilities with its foreign carrier affiliate.

18. The *Order* imposes a number of reporting requirements to assist the Commission in monitoring and detecting anticompetitive behavior. Foreign-affiliated dominant carriers will be required to file quarterly traffic and revenue reports for their dominant routes. The Commission requires that each dominant foreign-affiliated carrier file quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services it procures from its foreign affiliate, including, but not limited to, correspondent or other basic facilities procured on behalf of customers of joint venture offerings. Although the Commission does not dictate the format for the provisioning and maintenance reports, the Commission describes the information that it requires. The Commission directs the International Bureau to adopt a standard reporting manual if it feels that one would be helpful, and permits the Bureau to modify the contents of the filing requirements as necessary. Carriers subject to this requirement will be able to seek a protective order to ensure that parties to whom confidential information is made available limit the persons who will have access to the information and the purposes for which the information will be used.

19. All dominant foreign-affiliated facilities-based carriers will file quarterly circuit status reports. Although the Commission proposed quarterly notifications of circuit changes, the quarterly circuit status reports will provide information that can be more readily compared to the information provided by all U.S. international carriers on an annual basis under Section 43.82 of our rules. The Commission does not require dominant foreign-affiliated private line resale carriers to file quarterly circuit status reports, given that they rely on underlying U.S. facilities-based carriers to make arrangements with their affiliated carriers. The Commission directs the International Bureau to modify the Section 43.82 reporting manual as necessary to accommodate these changes. The Commission recognizes that the quarterly circuit status reports contain commercially sensitive information similar to the provisioning and maintenance reports. Thus, the Commission will allow dominant foreign-affiliated carriers to request the standard protective order for the three quarterly circuit status reports that dominant foreign-affiliated carriers must file.

20. The Commission does not adopt an expedited procedure to prevent competitive harm in the U.S. market. Rather, the Commission will rely on the various remedies currently available for addressing anticompetitive conduct. The Commission does, however, adopt a general rule that would enable it to impose additional requirements on U.S. international carriers in circumstances where it appears that harm to competition is occurring on one or more U.S. international routes. The Commission notes that it is presently reviewing its rules to ensure that the Commission provides a forum for the prompt resolution of all formal complaints against telecommunications carriers involving claims of unreasonably discriminatory or otherwise unlawful conduct in violation of the Communications Act or its rules.

21. In the *Flexibility Order* (62 FR 5535, February 6, 1997), the Commission developed a new approach for permitting alternative settlement arrangements. In this proceeding, the Commission will no longer apply the ECO test as a threshold standard for determining when to permit accounting rate flexibility. Instead, it will apply a rebuttable presumption that flexibility is permitted for carriers from WTO Member countries. In order to rebut this presumption, a party opposing a flexible arrangement must demonstrate that the foreign carrier is not subject to competition in its home market from multiple (more than one) facilities-based carriers that possess the ability to terminate international traffic and serve existing customers in the foreign market. The Commission also makes minor changes to conform its procedures for U.S. carriers to enter into an alternative payment arrangements, and it will apply the new policies and procedures to all flexibility petitions pending before the Commission in any procedural status at the time the new rules become effective. The Commission will continue to apply the safeguards developed in the *Flexibility Order* (62 FR 5535, February 6, 1997). The Commission will continue to allow the proponent of an alternative settlement arrangement with a carrier from a WTO Member country to make an alternative showing where the presumption in favor of flexibility can be rebutted.

22. The *Order* streamlines the Section 214 applications of carriers that demonstrate clearly and convincingly that the foreign carrier affiliate has less than a 50 percent market share in reach relevant terminating market in the destination foreign country (international, intercity, and local exchange access). Streamlined processing of Section 214 applications will be available to any applicant whose foreign affiliate is from a WTO Member country if the applicant requests authority only to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers. Streamlining will be available for foreign-affiliated carriers not otherwise eligible for streamlined processing as long as the applicant

certifies that it will comply with the dominant carrier regulations of the *Order*. In addition, the Commission will streamline applications for assignments and transfers of control of Section 214 authorizations in circumstances where an initial Section 214 application filed by the assignee or transferee would be eligible for streamlined processing. The Commission will streamline Section 310(b)(4) requests when they meet the criteria described in the *Order*. In all circumstances, Commission staff will have discretion to deem an application ineligible for streamlined processing either because it raises market power concerns or because an Executive Branch agency raises concerns with respect to issues within its expertise. In such cases the Commission will issue a public notice that the application has been removed from the streamlined process, and within ninety days of the public notice it will either issue an order acting upon the application or provide public notice that, because the application raises issues of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

23. The Commission amends its rules to raise the level of foreign ownership that requires prior notification from 10 percent to greater than 25 percent. This change will eliminate the requirement that authorized carriers notify the Commission before accepting foreign carrier investments of 25 percent or less. An authorized carrier will, however, be required to notify the Commission sixty days before it, or a company that owns more than 25 percent of it, acquires a direct or indirect controlling interest in a foreign carrier.

24. The Commission dismisses arguments that the Commission's public interest analysis is invalid under the General Agreement on Trade in Services (GATS). The Commission states that the *Order* establishes the parameters for reviewing applications to provide international services. The Commission also found that its safeguards are consistent with the GATS.

25. Finally, the Commission disposes of the pending petitions for reconsideration of the *Foreign Carrier Entry Order* because of their close relationship with the substance of this proceeding.

26. The Commission states that it will largely rely on reporting requirements, rather than restrictions on capacity changes or service options, to prevent carriers from causing competitive harm in the U.S. market. The Commission declines to adopt its proposal for a supplemental tier of dominant carrier safeguards for U.S. carriers affiliated with foreign carriers that do not face facilities-based competition on the foreign end of a particular route. The Commission retains authority to impose sanctions, in the event it finds evidence of anticompetitive conduct.

Final Regulatory Flexibility Analysis

27. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the Notice of Proposed Rulemaking in this proceeding. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. This analysis also serves as the FRFA for the issues disposed of here on reconsideration of the *Foreign Carrier Entry Order.*

Need for, and Objectives of, the Rules and Policies Adopted Here

28. This Report and Order and Order on Reconsideration adopts a liberalized standard for participation by foreign and foreign-affiliated entities in the U.S. telecommunications markets. This open entry standard will apply to the provision of international telecommunications services under Section 214 of the Communications Act, indirect foreign ownership of common carrier radio licensees under Section 310(b)(4), and cable landing licenses under the Submarine Cable Landing License Act. It also revises the Commission's regulatory safeguards governing the provision of international telecommunications services in light of recent changes in the world's telecommunications market and the Commission's liberalized standard for participation by foreign and foreign-affiliated entities. The Commission has deemed these changes appropriate in light of the recent World Trade Organization (WTO) Basic Telecommunications Services Agreement and the worldwide trend toward deregulation and competition in the provision of telecommunications services. Our objective is to increase competition in the U.S. telecommunications markets while minimizing the risk of anticompetitive harm and encouraging foreign governments to open their telecommunications markets. In light of the changed circumstances that will result from the WTO Basic Telecom Agreement and our nearly two years of experience with our current rules on market entry and regulation of foreign-affiliated entities, we find that reducing entry barriers for applicants affiliated with entities from WTO Member countries is the appropriate way to accomplish that objective. The Commission believes that it is no longer necessary to apply the ''effective competitive opportunities'' (ECO) test developed in the 1995 *Foreign Carrier Entry Order* to countries that are Members of the WTO. Instead, we will rely primarily on regulatory safeguards and benchmark settlement rates to reduce the potential for anticompetitive conduct in the U.S. market. We revise some of those safeguards in this Order.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

29. No comments were submitted specifically in response to the IRFA. Nevertheless, we have considered, in developing these rules and policies, any potential significant economic impact on small entities. We have attempted to minimize the burdens imposed on all entities, including small entities, in order to promote participation by new entrants in the U.S. telecommunications markets.

30. NextWave raised comments in response to the Notice specific to the impact of our policy toward indirect foreign investment in C-block and F-block licensees. Those blocks, known as ''entrepreneur'' blocks, are reserved for small businesses and entrepreneurs. NextWave states that it and other entrepreneurial carriers are dependent on financing from a variety of sources, including foreign investment, and that access to foreign capital is vital to their financial viability. NextWave argues that indirect foreign investment in C-block and F-block licensees presents ''no conceivable risk to competition'' because those licenses are held by entrepreneurs who are new entrants into the markets. NextWave proposes that, for that reason, the Commission should conclude that indirect foreign investment in C-block and F-block personal communications systems (PCS) licensees by any entity whose home market is a WTO Member country serves the public interest and should not be subject to prior Commission approval. NextWave also urges the Commission, in the alternative, to establish an expedited process and timetable for addressing applications to exceed the 25 percent benchmark for indirect foreign ownership of common carrier wireless licensees.

31. Telephone and Data Systems (TDS) proposed that the Commission permit without prior approval any amount of indirect foreign ownership of common carrier radio licensees held in the form of registered securities when

the foreign investor is not a carrier and comes from one of the 64 other WTO Member countries that has committed to enforce fair rules of competition for basic telecommunications. Under TDS's proposal, the Commission would continue to require prior approval for investors from other WTO Member countries, for investors from non-WTO countries, and from all foreign carriers. TDS suggested that we scrutinize filings with the Securities and Exchange Commission to monitor foreign ownership of registered securities and that we rely on revocation, instead of prior approval, to protect the public interest pursuant to Section 310(b)(4). TDS states that adoption of its proposal would significantly reduce burdens on common carrier radio licensees, who currently must research the nationalities of their individual shareholders in order to remain in compliance with the restrictions on foreign ownership.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

32. We received no comments in response to our estimates in the IRFA of the number of small entities to which the proposed rules would apply. We conclude that the IRFA's estimates are the best available estimates of the number of small entities that the rules we adopt here will affect and that those estimates are sufficiently useful in enabling us to attempt to minimize the economic impact of our rules on small entities.

33. The RFA generally defines *small entity* as having the same meaning as the terms *small business, small organization, and small governmental jurisdiction* and defines small business as having the same meaning as the term small business concern under section 3 of the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities. The Small Business Act defines *small business concern* as one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

34. The rules adopted in this Order apply only to entities providing international common carrier services pursuant to Section 214 of the Communications Act; entities providing domestic or international wireless common carrier, aeronautical enroute, or aeronautical fixed services under Section 309 of the Act; and entities licensed to construct and operate submarine cables under the Cable Landing License Act.

35. Because the small incumbent local exchange carriers (LECs) subject to these rules are either dominant in their fields of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definitions of *small entity* and small business concern. Accordingly, our use of the terms small entities and *small businesses* does not encompass small incumbent LECs. Out of an abundance of caution, however, for the purposes of this FRFA, we will consider small incumbent LECs to be within this analysis, where a small incumbent LEC is any incumbent LEC that arguably might be defined by the SBA as a ''small business concern.''

Section 214 International Common Carrier Services

36. Entities providing international common carrier service pursuant to Section 214 of the Act fall into the SBA's Standard Industrial Classification (SIC) categories for Radiotelephone Communications (SIC 4812) and Telephone Communications, Except Radiotelephone (SIC 4813). The SBA's definition of *small entity* for those categories is one with fewer than 1,500 employees. We discuss below the number of small entities falling within these two subcategories that may be affected by the rules adopted in this *Order.*

37. The most reliable source of information regarding the number of international common carriers is the data that we collect annually in connection with the *Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet).* In 1995, 445 toll carriers filed TRS fund worksheets. We believe that between 50 and 200 carriers failed to file TRS fund worksheets. We believe also that fewer than 10 toll carriers had 1,500 or more employees. Thus, at most 635 international carriers would be classified as small entities. Many TRS filers, however, are affiliated with other carriers, and therefore the number of aggregated carriers is far fewer than the preceding estimate. Of the 445 toll filers, 239 reported no carrier affiliates. Adding 50 non-filers gives a lower estimate of 289 international carriers that would be classified as small entities. Thus, our best estimate of the total number of small entities is between 289 and 635. We are unable at this time to estimate with greater precision the number of international carriers that would qualify as small business entities under the SBA's definition. While not all of these entities may have provided international service in 1995, we expect that many of these entities will seek to do so in the future, as will additional entrants into the market.

b. Title III Common Carrier Services

38. *Cellular licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The closest applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular services carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet.* According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular services carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small cellular service carriers.

39. *220 MHz Radio Services.* Because the Commission has not yet defined a small business with respect to 220 MHz radio services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity employing less than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years, and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Since this definition has not yet been approved by the SBA, we will utilize the SBA's definition applicable to radiotelephone companies. Given the fact that nearly all radiotelephone companies employ fewer than 1,000 employees, with respect to the approximately 3,800 incumbent licensees in this service, we will consider them to be small businesses under the SBA definition.

40. *Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging services. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition

applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. At present, there are approximately 74,000 Common Carrier Paging licensees. We estimate that the majority of common carrier paging providers would qualify as small businesses under the SBA definition.

41. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers such as paging companies. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet.* According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition. Consequently, we estimate that fewer than 117 mobile service carriers are small entities.

42. *Broadband Personal Communications Services (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has defined *small entity* in the auctions for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenue of not more than $15 million for the preceding three calendar years. These regulations defining *small entity* in the context of broadband PCS auctions have been approved by the SBA. No small business within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small businesses won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

43. *Narrowband PCS.* The Commission does not know how many narrowband PCS licenses will be granted or auctioned, as it has not yet determined the size or number of such licenses. Two auctions of narrowband PCS licenses have been conducted for a total of 41 licenses, out of which 11 were obtained by small businesses owned by members of minority groups and/or women. Small businesses were defined as those with average gross revenues for the prior three fiscal years of $40 million or less. For purposes of this FRFA, the Commission is utilizing the SBA definition applicable to radiotelephone companies, i.e., an entity employing less than 1,500 persons. Not all of the narrowband PCS licenses have yet been awarded. There is therefore no basis to determine the number of licenses that will be awarded to small entities in future auctions. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective narrowband PCS licensees can be made, we assume, for purposes of the evaluations and conclusions in this FRFA, that all the remaining narrowband PCS licenses will be awarded to small entities.

44. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules. A significant subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems (the parameters of which are defined in Sections 22.757 and 22.759 of the Commission's Rules). Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them have fewer than 1,500 employees.

45. *Air-Ground Radiotelephone.* The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

46. *Specialized Mobile Radio Licensees (SMR).* Pursuant to Section 90.814(b)(1) of our rules, the Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of less than $15 million in each of the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations or how many of these providers have annual revenues of less than $15 million. We do know that one of these firms has over $15 million in revenues. We assume that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected includes these 60 small entities.

47. *Microwave Video Services.* Microwave services includes common carrier, private operational fixed, and broadcast auxiliary radio services. At present, there are 22,015 common carrier licensees. Inasmuch as the Commission has not yet defined *small business* with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with less than 1,500 employees. Although some of these companies may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of common carrier microwave service providers that would qualify under the SBA's definition. We therefore estimate that there are fewer than 22,015 small common carrier licensees in the microwave video services.

48. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. Some of those licensees are common carriers. We are unable at this

time to estimate the number of licensees that would qualify as small under the SBA's definition.

49. *Local Multipoint Distribution Service (LMDS).* The Commission has so far licensed only one licensee in this service, and that licensee is not providing service as a common carrier. There will be a total of 986 LMDS licenses. Licensees will be permitted to decide whether to provide common carrier service, and we have no way of estimating how many will choose to do so. Because there will be no restrictions on the number of licenses a given entity may acquire, we have no way of estimating how many total licensees there will be. We also cannot estimate the number of common carrier licensees that will qualify as small entities.

50. *Space Stations (Geostationary).* Very few systems are currently operated on a common carrier basis. Because we do not collect information on annual revenue or number of employees of all these licensees, we cannot estimate with precision the number of such licensees that may constitute a small business entity. It is likely that no more than one such entity that is currently operating as a common carrier would constitute a small business entity. There may be a small increase in the number of such entities in the future as a result of recent licensing action in the Ka-band.

51. *Space Stations (Non-geostationary).* These systems by and large do not operate as common carriers. Because we do not collect information on annual revenue or number of employees, we cannot estimate with precision whether any carrier that may choose to operate on a common carrier basis constitutes a small business entity. The trend is for such systems to operate on a non-common carrier basis. These systems, of which there will be a limited number, by and large are not yet operational and are still being licensed and constructed.

52. *Earth Stations.* The vast majority of earth stations licensed by the Commission are not operated on a common carrier basis. Earth stations that communicate with non-geostationary and Ka-band satellite systems may operate on a common carrier basis but these systems are not yet operational and are still being licensed and constructed. We are unable to estimate at this time the number of earth stations communicating with such systems that may operate on a common carrier basis and, of those, the number that will be licensed to small business entities.

c. Aeronautical Enroute and Aeronautical Fixed Licenses

53. The Commission has not adopted a definition of small business specific to the aeronautical enroute and aeronautical fixed services. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are 45 licensees providing aeronautical enroute and aeronautical fixed services, including Aeronautical Radio Inc. (ARINC) and its affiliates. All of the licensees are small businesses except ARINC, which has approximately 2,000 employees. We therefore conclude that there are 44 small businesses providing aeronautical enroute and aeronautical fixed services.

d. Submarine Cable Landing Licenses

54. The new rules and policies adopted in this *Order* will affect all holders of and future applicants for cable landing licenses, whether or not they operate their cables as common carriers. It is difficult to estimate how many applications for cable landing licenses will be filed in coming years, but that number will likely increase if we adopt our proposal to lower the barriers to granting licenses for cables to WTO Member countries. Since 1992, there have been approximately 40 applications for cable landing licenses. The total number of licensees is difficult to determine, because many licenses are jointly held by several licensees. Our rules will also permit more current licensees to accept additional investment from entities from WTO Member countries.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

55. The rules and policies adopted in this *Report and Order and Order on Reconsideration* will affect large and small entities. We will require that U.S. carriers whose foreign affiliates have market power maintain or provide certain records regarding their foreign affiliates. Our rules will in most cases reduce the burdens that are currently imposed on such carriers, and we anticipate that the remaining requirements will not impose a significant economic burden, particularly on small entities. A variety of skills may be required to comply with the proposed requirements, but all of the skills that may be required are of the type needed to conduct a carrier's normal course of business. No additional outside professional skills should be required, with the possible exception of preparing an initial Section 214 or cable landing license application and of preparing a submission for our consideration under Section 310(b)(4), most of which will be simplified by the rules and policies we adopt here.

56. An applicant for a Section 214 authorization or a cable landing license will no longer be required to show either that an affiliated foreign carrier lacks market power or that the destination country provides effective competitive opportunities (ECO) to U.S. carriers so long as it shows that the destination country is a Member of the World Trade Organization. Similarly, entities holding or seeking to hold common carrier wireless licenses or aeronautical enroute or aeronautical fixed licenses that have more than 25 percent indirect foreign investment will not need to demonstrate that the home markets of the foreign investor or investors from WTO Members offer effective competitive opportunities for U.S. investors in the analogous service sector.

57. Authorized international common carriers will no longer be required to notify the Commission before accepting investments by foreign carriers (or their affiliates) between 10 percent and 25 percent. We have retained a requirement that authorized carriers notify the Commission before accepting investment greater than 25 percent. We have added a requirement that authorized carriers notify the Commission before they (or their affiliates) acquire a direct or indirect controlling interest in a foreign carrier; previously, those interests were subject only to a post hoc notification requirement. We continue to require authorized carriers to notify the Commission within 30 days after acquiring a direct or indirect interest greater than 25 percent in a foreign carrier if the acquisition of that interest has not otherwise been reported.

58. We have narrowed the application of our ''No Special Concessions'' rule, which prohibits carriers from entering into exclusive arrangements with foreign carriers. That rule will now apply only to carriers' dealings with foreign carriers that have sufficient market power in their home markets to adversely affect competition in the U.S. market. Carriers wishing to enter into alternative settlement arrangements with foreign carriers operating in WTO Member countries will presumptively be allowed to do so. That presumption may be overcome where an opponent demonstrates that there are not multiple facilities-based carriers operating in the foreign carrier's market.

59. To ensure fair competition among authorized carriers and to be consistent with our policy governing the confidentiality of competing carrier information, all U.S. carriers will be prohibited from receiving proprietary or confidential information about competing U.S. carriers obtained by any foreign carrier in the course of its regular business dealings with the competing U.S. carrier, unless the U.S. carrier provides specific written permission. We will also require U.S. carriers desiring to make use of foreign-derived customer proprietary network information (CPNI) pertaining to a specific U.S. customer to first obtain approval from that customer and notify that customer that the customer may require the carrier to disclose the CPNI to unaffiliated third parties.

60. An authorized carrier affiliated with a foreign carrier will be subject to additional requirements. Its authorization to serve the affiliated market will be conditioned on the foreign affiliate's offering to all U.S.-licensed carriers a settlement rate at or below the benchmark adopted for that country in the Commission's recent *Benchmarks Order*. Foreign-affiliated carriers classified as dominant are subject to additional reporting, recordkeeping, and compliance requirements. In this *Order*, we substantially reduce the initial showing that a foreign-affiliated carrier must make in order to be presumptively classified as non-dominant by adopting a presumption that a foreign carrier with less than 50 percent market share in certain relevant terminating markets does not have sufficient market power to affect competition adversely in the U.S. market. We remove existing dominant carrier requirements that we find to be unnecessarily burdensome and adopt a narrowly tailored dominant carrier framework designed to address specific concerns of anticompetitive behavior. We replace the requirement that dominant carriers file tariffs on fourteen days' advance notice with a one-day advance notice requirement, and we will accord these tariff filings a presumption of lawfulness. We will no longer require foreign-affiliated carriers to obtain Commission approval before adding or discontinuing circuits on the dominant route. We require dominant carriers to provide service on the affiliated route through a corporation that is separate from its foreign affiliate, maintain separate books of account, and not jointly own switching or transmission facilities with its foreign affiliate. Carriers regulated as dominant will be required to file quarterly traffic and revenue reports, provisioning and maintenance reports, and circuit status reports on the dominant affiliated route. We decline to adopt the proposal in the Notice to ban exclusive arrangements involving joint marketing, customer steering, and the use of foreign market telephone customer information.

61. Finally, we impose a reporting requirement on switched resellers that are affiliated with a foreign carrier that has sufficient market power on the foreign end of a route to affect competition adversely in the U.S. market. We will require these resellers to file quarterly traffic and revenue reports for their switched resale traffic on the affiliated route.

Federal Rules That May Duplicate, Overlap, or Conflict With the Rules Adopted Here

62. None.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. We have taken significant steps to minimize the procedural burdens imposed on all affected entities. The application of the rules we adopt in this *Order* does not vary depending on the size of the entities involved. Some regulations may be more burdensome on large carriers than on small carriers because large carriers may be more likely to be dominant or to operate on a facilities basis than are small carriers. That is, small carriers may be more likely to operate as resellers of switched international services, which are less likely to be subject to our most stringent regulation.

64. The revisions to our policies toward evaluating Section 214 and cable landing license applications will significantly reduce burdens on many current and potential international common carriers. A foreign-affiliated carrier seeking to serve an affiliated route will no longer be required to show either that its affiliate lacks market power or that the destination country provides effective competitive opportunities (ECO) to U.S. carriers so long as it shows that the destination country is a Member of the World Trade Organization. We believe this to be a minimal burden for most small entities and a significantly lesser burden than the detailed showings required to demonstrate either that the affiliate lacks market power or that the destination country provides ECO. The ECO test, in particular, has proven to be unusually burdensome both on applicants and on the Commission.

65. Similarly, the revisions to our policy toward evaluating Section 310(b)(4) requests by common carrier radio licensees and aeronautical licensees to accept indirect foreign investment greater than 25 percent will significantly reduce the burdens on licensees (and prospective licensees) seeking to accept investment from entities in WTO Member countries. Those applicants will no longer be required to show that the home market of the investor offers effective competitive opportunities for U.S. investors in the analogous service sector. This will make those applications much simpler and less time-consuming and, more importantly, will make it much easier for licensees to accept foreign investment and for prospective licensees to plan their business affairs. Common carrier radio licensees will continue to be required to seek Commission approval before accepting indirect foreign investment above a level for which they have previously received Commission approval.

66. We have taken steps to facilitate entry into the U.S. market for international telecommunications services by small carriers. Small carriers often enter the market, at least initially, by reselling the switched services of other authorized international carriers. In this *Order*, we change our procedural rules to afford streamlined processing to any applicant whose foreign affiliate is from a WTO Member country if the applicant requests authority to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers. We also will streamline process the Section 214 application of any foreign-affiliated applicant whose affiliate is from a WTO Member and that demonstrates clearly and convincingly that the foreign affiliate has less than a 50 percent market share in certain relevant terminating markets in the destination foreign country. In addition, we will streamline process the Section 214 application of any applicant whose affiliate is from a WTO Member and is not otherwise eligible for streamlined processing if the applicant certifies that it will comply with our dominant carrier regulations. Streamlined applications, unless they are removed from the streamlined process, are granted 35 days from the date they are placed on public notice.

67. In revising our regulations that apply to authorized international common carriers, we have developed a targeted approach designed to monitor and detect anticompetitive behavior in the U.S. market without imposing regulations that are more burdensome than necessary. In doing so, we have

attempted to minimize burdens on entities that are unlikely to pose a threat to competition. We also have removed restrictions on whole categories of activities that we have concluded do not pose a threat to competition in the developing competitive marketplace. Our approach relies in large part on reporting requirements, rather than restrictions on capacity changes or service options, to prevent affiliated carriers from causing competitive harms in the U.S. international services market.

68. We have significantly reduced the scope of our rule that prohibits carriers from entering into certain exclusive arrangements with foreign carriers. Our ''No Special Concessions'' rule will now prohibit accepting certain specified arrangements only from foreign carriers that have sufficient market power in their home markets to adversely affect competition in the U.S. market. We adopt a presumption that foreign carriers with less than 50 percent market share in the relevant terminating markets do not have such sufficient market power. We anticipate that delineating those arrangements that are subject to the prohibition and adopting this presumption will significantly clarify the circumstances in which authorized carriers will be permitted to accept special concessions from foreign carriers. This more targeted rule also will allow authorized carriers substantially more flexibility in arranging their business affairs.

69. Carriers wishing to enter into alternative settlement arrangements with foreign carriers operating in WTO Member countries will presumptively be allowed to do so. This presumption may be overcome by a demonstration that there are not multiple facilities-based carriers operating in the foreign carrier's market. We expect to allow alternative settlements more as a rule than as an exception, and the issue of whether there are multiple facilities-based carriers operating in the foreign market will be less burdensome than the issue of whether the foreign market offers effective competitive opportunities, which is the standard being replaced.

70. We have declined, in this *Order*, to adopt certain proposals in the Notice that would have restricted the business strategies of carriers classified as dominant. Instead, we will impose reporting requirements that will enable us to detect and deter anticompetitive behavior. We have declined to adopt proposals in the *Notice* to ban exclusive arrangements involving joint marketing, customer steering, and the use of foreign market telephone customer information. We have found that such proscriptive safeguards would be unduly burdensome and could unnecessarily impede business activities. We choose to rely instead on the general prohibition on accepting special concessions combined with additional reporting and disclosure requirements, instead of proscriptive safeguards, for carriers with foreign affiliations. We have also relieved carriers of the requirement to notify the Commission of investments by foreign carriers of 10 percent or more; they now must report an investment by a foreign carrier only when that investment exceeds 25 percent. We conclude that none of the safeguards we impose specifically on carriers classified as dominant will impose significant economic burdens.

71. We have also declined to impose on switched resellers a condition that their foreign affiliates maintain settlement rates at or below the benchmark settlement rates we adopted in the *Benchmarks Order*. We find that such a condition would be unnecessarily burdensome inasmuch as resellers have less ability to engage in anticompetitive conduct than facilities-based carriers and we have a greater ability to detect anticompetitive conduct by switched resellers. Imposing a benchmark condition on switched resellers would impose significant economic impact on resellers, many of whom are small entities, that could prevent some new entrants from entering the U.S. market and affect the ability of existing carriers to provide service. To address concerns about traffic distortions related to resale, however, we have decided to impose a requirement on switched resellers that are affiliated with a carrier that has sufficient market power to affect competition adversely in the U.S. market. We will require those resellers to file quarterly traffic and revenue reports for their traffic on the affiliated route in order to enable the Commission to determine whether switched resellers are engaging in anticompetitive conduct.

72. In the Notice, we sought comment on whether to adopt, as an additional dominant carrier safeguard, some level of structural separation between a U.S. carrier and its affiliated foreign carrier. We adopt here a requirement that a foreign-affiliated U.S. international carrier regulated as dominant provide service in the U.S. market through a corporation that is separate from the foreign affiliate, maintain separate books of account, and not jointly own switching and transmission facilities with its foreign carrier affiliate. We find that, without such separation, discrimination, cost-misallocation, and the possibility of a predatory price squeeze by such a foreign-affiliated carrier would have the potential to cause substantial harm to consumers, competition, and production efficiency in the U.S. international services market. These requirements will not impose a significant burden on such carriers because most foreign-affiliated carriers operating in the United States do so in a manner that is consistent with the requirements we adopt here. We have considered imposing more stringent structural separation requirements but have found them to be unnecessary and to potentially impose a significant burden on foreign-affiliated carriers that operate in the U.S. market.

73. We are unable to adopt NextWave's proposal to state that indirect foreign investment in C-block and F-block PCS licensees by any entity whose home market is a WTO Member country serves the public interest and will not be subject to prior Commission approval. We have found that prior approval is necessary in all instances of indirect foreign investment in excess of 25 percent because of the need to review such investments for national security, law enforcement, foreign policy, and trade concerns as well as for the exceptional case that poses a very high risk to competition. We do, however, adopt NextWave's alternative proposal to establish an expedited process and timetable for addressing those applications: These applications will generally be added to the International Bureau's streamlined process and usually granted within 35 days from the date the International Bureau places the application on public notice. We expect that application of our open entry standard and streamlined process will both minimize procedural burdens on small entities and present substantial new opportunities for obtaining foreign capital.

74. We are unable to adopt TDS's proposal to disregard investments in common carrier radio licensees by non-carriers held as publicly traded securities. We accept the concerns of Executive Branch agencies that a prior approval process is necessary for all investments and that even small investments in publicly traded securities could, if aggregated, nevertheless create a degree of control or influence over a licensee that would be contrary to U.S. national security or law enforcement issues.

75. We have also decided not to adopt a policy that a common carrier radio licensee need not seek Commission approval before accepting increases in indirect foreign ownership once they

have obtained Commission authority to exceed 25 percent indirect foreign ownership. We have determined that every such increase requires Commission review in order to consider the effect of the ownership on national security and law enforcement interests.

76. We conclude that these steps we have taken to minimize significant economic impact on small entities will advance the small business goals of Section 257 of the Act, as added by the Telecommunications Act of 1996.

Report to Congress

77. The Commission will send a copy of this Report and Order and Order on Reconsideration, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). A summary of this Report and Order and Order on Reconsideration, and a copy of this FRFA, will also be published in the **Federal Register**, *see* 5 U.S.C. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act of 1995 Analysis

78. This Report and Order contains a 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 order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due February 9, 1998. Comments should address: (a) Whether the 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.

79. Public reporting burden for the collections of information is estimated as follows:

OMB Control Number: 3060–0686.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Type of Review: Revision of existing collection.

Respondents: Business or other For-Profit.

Number of Respondents: 3,251.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 145,895 hours.

Estimated costs per respondent: $3,192.

Needs and Uses: The information collections pertaining to Parts 1 and 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications services, or to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections contained in amendments to § 63.10 of the Commission's rules are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have market power. The information collected pursuant to part 61 of the rules is necessary for the Commission to ensure that rates, terms and conditions for international service are just and reasonable, as required by the Communications Act of 1934.

80. The information collections under § 310(b)(4) of the Act are necessary to determine, under that section, whether a greater than 25 percent indirect foreign ownership interest in a U.S. common carrier ratio licensee would be inconsistent with the public interest.

81. We do not anticipate that the rules will have any impact on the paperwork burden imposed under the Commission's *Flexibility Policy* established in the *Fourth Report and Order*, CC Docket No. 90–337, Phase I (62 FR 5535, February 6, 1997), OMB Control Nos. 3060–0160 and 3060–0764.

Ordering Clauses

82. Accordingly, *it is ordered* that, pursuant to Sections 1, 2, 4(i), 201, 203, 205, 214, 303(r), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 152, 154(i), 201, 205, 214, 303(r), 310, the policies, rules, and requirements discussed herein *are adopted* and parts 43, 63, and 64, 47 CFR parts 43, 63, and 64 *are revised*.

83. *It is further ordered* that authority is delegated to the Chief, International Bureau as discussed in this Order.

84. *It is further ordered* that the petitions for reconsideration in IB Docket No. 95–22 *are granted* in part, *denied* in part, and *deferred* as discussed in this Order.

85. *It is further ordered* that the Commission's Office of Managing Director shall send a copy of this Report and Order and Order on Reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

86. *It is further ordered* that the policies, rules, and requirements established in this decision shall take effect January 8, 1998 or in accordance with the requirements of 5 U.S.C. 801(a)(3) and 44 U.S.C. 3507. The Commission will publish a document at a later date announcing the effective date. The Commission reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998.

List of Subjects in 47 CFR Parts 43, 63, and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

Parts 43, 63, and 64 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for Part 43 continues to read as follows:

Authority: 47 U.S.C. 154.

2. § 43.51 is amended by revising paragraph (d) to read as follows:

§ 43.51 Contracts and concessions.

* * * * *

(d) Any U.S. carrier that interconnects an international private line to the U.S. public switched network, at its switch, including any switch in which the carrier obtains capacity either through lease or otherwise, shall file annually with the Chief of the International Bureau a certified statement containing the number and type (e.g., a 64-kbps circuit) of private lines interconnected in such a manner. The certified statement shall specify the number and type of interconnected private lines on a country specific basis. The identity of the customer need not be reported, and the Commission will treat the country of origin information as confidential. Carriers need not file their contracts for such interconnections, unless they are specifically requested to do so. These reports shall be filed on a consolidated basis on February 1 (covering international private lines interconnected during the preceding January 1 to December 31 period) of each year. International private lines to countries for which the Commission has authorized the provision of switched

basic services over private lines at any time during a particular reporting period are exempt from this requirement.

3. § 43.61 is amended by revising paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

* * * * *

(c) Each common carrier engaged in the resale of international switched services that has an affiliation with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. For purposes of this paragraph, ''affiliation'' is defined in § 63.18(h)(1)(i) of this chapter and ''foreign carrier'' is defined in § 63.18(h)(1)(ii) of this chapter.

* * * * *

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403, 533 unless otherwise noted.

2. § 63.10 is revised to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

(a) Unless otherwise determined by the Commission, any party authorized to provide an international communications service under this part shall be classified as either dominant or non-dominant for the provision of particular international communications services on particular routes as set forth in this section. The rules set forth in this section shall also apply to determinations of regulatory status pursuant to §§ 63.11 and 63.13. For purposes of paragraphs (a)(1) through (a)(3) of this section, ''affiliation'' and ''foreign carrier'' are defined as set forth in § 63.18(h)(1)(i) and (ii), respectively. For purposes of paragraphs (a)(2) and (a)(3) of this section, the relevant markets on the foreign end of a U.S. international route include: international transport facilities or services, including cable landing station access and backhaul facilities; inter-city facilities or services; and local access facilities or services on the foreign end of a particular route.

(1) A U.S. carrier that has no affiliation with, and that itself is not, a foreign carrier in a particular country to which it provides service (i.e., a destination country) shall presumptively be considered non-dominant for the provision of international communications services on that route;

(2) Except as provided in paragraph (a)(4) of this section, a U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is a monopoly provider of communications services in a relevant market in a destination country shall presumptively be classified as dominant for the provision of international communications services on that route; and

(3) A U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is not a monopoly provider of communications services in a relevant market in a destination country and that seeks to be regulated as non-dominant on that route bears the burden of submitting information to the Commission sufficient to demonstrate that its foreign affiliate lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. If the U.S. carrier demonstrates that the foreign affiliate lacks 50 percent market share in the international transport and the local access markets on the foreign end of the route, the U.S. carrier shall presumptively be classified as non-dominant.

(4) A carrier that is authorized under this part to provide to a particular destination country a particular international communications service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services (either directly or indirectly through the resale of another U.S. resale carrier's international switched services), shall presumptively be classified as non-dominant for the provision of the authorized service. The existence of an affiliation with a U.S. facilities-based international carrier shall be assessed in accordance with the definition of affiliation contained in § 63.18(h)(1)(i) of this chapter, except that the phrase ''U.S. facilities-based international carrier'' shall be substituted for the phrase ''foreign carrier.''

(b) Any party that seeks to defeat the presumptions in paragraph (a) of this section shall bear the burden of proof upon any issue it raises as to the proper classification of the U.S. carrier.

(c) Any carrier classified as dominant for the provision of particular services on particular routes under this section shall comply with the following requirements in its provision of such services on each such route:

(1) File international service tariffs on one day's notice without cost support;

(2) Provide services as an entity that is separate from its foreign carrier affiliate, in compliance with the following requirements:

(i) The authorized carrier shall maintain separate books of account from its affiliated foreign carrier. These separate books of account do not need to comply with Part 32 of this chapter; and

(ii) The authorized carrier shall not jointly own transmission or switching facilities with its affiliated foreign carrier. Nothing in this section prohibits the U.S. carrier from sharing personnel or other resources or assets with its foreign affiliate;

(3) File quarterly reports on traffic and revenue, consistent with the reporting requirements authorized pursuant to § 43.61, within 90 days from the end of each calendar quarter;

(4) File quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services procured from its foreign carrier affiliate or from an allied foreign carrier, including, but not limited to, those it procures on behalf of customers of any joint venture for the provision of U.S. basic or enhanced services in which the authorized carrier and the foreign carrier participate, within 90 days from the end of each calendar quarter. These reports should contain the following: the types of circuits and services provided; the average time intervals between order and delivery; the number of outages and intervals between fault report and service restoration; and for circuits used to provide international switched service, the percentage of ''peak hour'' calls that failed to complete;

(5) In the case of an authorized facilities-based carrier, file quarterly circuit status reports within 90 days from the end of each calendar quarter in the format set out by the § 43.82 annual circuit status manual, with two exceptions: activated or idle circuits must be reported on a facility-by-facility basis; and the derived circuits need not be specified in the three quarterly reports due on June 30, September 30, and December 31. For purposes of this paragraph, ''facilities-based carrier'' is defined in § 63.18 note 2 to paragraph (h).

(d) A carrier classified as dominant under this section shall file an original and two copies of each report required by paragraphs (c)(3), (c)(4), and (c)(5) of this section with the Chief, International Bureau. The carrier shall include with its filings separate computer diskettes for the reports required by paragraphs (c)(3) and (c)(5), in the format specified by the § 43.61 and § 43.82 filing manuals, respectively. The carrier shall also file one paper copy of these reports, accompanied by the appropriate computer diskettes, with the Commission's copy contractor. The transmittal letter accompanying each report shall clearly identify the report as responsive to the appropriate paragraph of § 63.10(c).

3. § 63.11 is revised to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that have or propose to acquire an affiliation with a foreign carrier.

(a) Any carrier authorized to provide international communications service under this part shall notify the Commission sixty days prior to the consummation of either of the following acquisitions of direct or indirect controlling interests in or by foreign carriers:

(1) acquisition of a direct or indirect controlling interest in a foreign carrier (as defined in § 63.18(h)(1)(ii)) by the authorized carrier, or by any entity that directly or indirectly controls the authorized carrier, or that directly or indirectly owns more than 25 percent of the capital stock of the authorized carrier; or

(2) acquisition of a direct or indirect interest in the capital stock of the authorized carrier by a foreign carrier or by an entity that directly or indirectly controls a foreign carrier where the interest would create an affiliation within the meaning of § 63.18(h)(1)(i)(B).

(b) Any carrier authorized to provide international communications service under this part that becomes affiliated with a foreign carrier within the meaning of § 63.18(h)(1) that has not previously notified the Commission pursuant to this section or § 63.18 shall notify the Commission within thirty days after acquiring the affiliation. In particular, acquisition by an authorized carrier (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the authorized carrier) of a direct or indirect interest in a foreign carrier that is greater than 25 percent but not controlling is subject to this paragraph but not to paragraph (a).

(c) The notification required under paragraphs (a) and (b) of this section shall contain a list of the affiliated foreign carriers named in paragraphs (a) and (b) of this section and shall state individually the country or countries in which the foreign carriers are authorized to provide telecommunications services to the public. It shall additionally specify which, if any, of these countries is a Member of the World Trade Organization; which, if any, of these countries the U.S. carrier is authorized to serve under this part; what services it is authorized to provide to each such country; and the FCC File No. under which each such authorization was granted. The notification shall certify to the information specified in this paragraph.

(1) The carrier also should specify, where applicable, those countries named in paragraph (c) of this section for which it provides a specified international communications service solely through the resale of the international switched services of U.S. facilities-based carriers with which the resale carrier does not have an affiliation. Such an affiliation is defined in § 63.18(h)(1)(i), except that the phrase ''U.S. facilities-based international carrier'' shall be substituted for the phrase ''foreign carrier.''

(2) The carrier shall also submit with its notification:

(i) The ownership information as required to be submitted pursuant to § 63.18(h)(2); and

(ii) A ''special concessions'' certification as required to be submitted pursuant to § 63.18(i).

(d) In order to retain non-dominant status on the affiliated route, the carrier notifying the Commission of a foreign carrier affiliation under paragraph (a) or (b) of this section should provide information to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

(e) After the Commission issues a public notice of the submissions made under this section, interested parties may file comments within 14 days of the public notice.

(1) In the case of a notification filed under paragraph (a) of this section, the Commission, if it deems it necessary, will by written order at any time before or after the submission of public comments impose dominant carrier regulation on the carrier for the affiliated routes based on the provisions of § 63.10.

(2) The Commission will, unless it notifies the carrier in writing within 30 days of issuance of the public notice that the investment raises a substantial and material question of fact as to whether the investment serves the public interest, convenience and necessity, presume the investment to be in the public interest. If notified that the investment raises a substantial and material question, then the carrier shall not consummate the planned investment until it has filed an application under § 63.18 and submitted the information specified under § 63.18(h)(5) or (6) as applicable, and § 63.18(h)(7) and (8), as applicable, and the Commission has approved the application by formal written order.

(f) All authorized carriers are responsible for the continuing accuracy of certifications with regard to affiliations with foreign carriers made under this section and under § 63.18. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible, and in any event within thirty days, file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided, *except that* the carrier shall immediately inform the Commission if at any time the representations in the ''special concessions'' certification provided under paragraph (c)(2)(ii) of this section or § 63.18(i) are no longer true. *See* § 63.18(i). This information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10.

Note to § 63.11: ''Control'' as used in this section includes actual working control in whatever manner exercised and is not limited to majority stock ownership.

4. § 63.12 is revised to read as follows:

§ 63.12 Processing of international Section 214 applications.

(a) Except as provided by paragraph (c) of this section, a complete application seeking authorization under § 63.18 shall be granted by the Commission 35 days after the date of public notice listing the application as accepted for filing.

(b) Issuance of public notice of the grant shall be deemed the issuance of Section 214 certification to the applicant, which may commence operation on the 36th day after the date of public notice listing the application as accepted for filing, but only in accordance with the operations proposed in its application and the rules, regulations, and policies of the Commission.

(c) The streamlined processing procedures provided by paragraphs (a) and (b) of this section shall not apply where:

(1) The applicant has an affiliation within the meaning of § 63.18(h)(1)(i) with a foreign carrier in a destination market, and the Commission has not yet made a determination as to whether that foreign carrier lacks sufficient market power in that destination market to affect competition adversely in the U.S. market, unless the applicant clearly demonstrates in its application at least one of the following:

(i) The applicant qualifies for a presumption of non-dominance under § 63.10(a)(3);

(ii) The affiliated destination market is a WTO Member country and the applicant qualifies for a presumption of non-dominance under § 63.10(a)(4); or

(iii) The affiliated destination market is a WTO Member country and the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10, without prejudice to its right to petition for reclassification at a later date; or

(2) The applicant has an affiliation within the meaning of § 63.18(h)(1)(i) with a dominant U.S. carrier whose international switched or private line services the applicant seeks authority to resell (either directly or indirectly through the resale of another reseller's services), unless the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10 (without prejudice to its right to petition for reclassification at a later date); or

(3) The applicant seeks authority to provide switched basic services over private lines to a country for which the Commission has not previously authorized the provision of switched services over private lines; or

(4) The application is formally opposed by a pleading meeting the following criteria:

(i) The caption and text of the pleading make it unmistakably clear that the pleading is intended to be a formal opposition;

(ii) The pleading is served upon the other parties to the proceeding; and

(iii) The pleading is filed within the time period prescribed for the filing of objections or comments; or

(5) The Commission has informed the applicant in writing, within 28 days after the date of public notice accepting the application for filing, that the application is not eligible for streamlined processing under this section.

(d) Any complete application that is subject to paragraph (c) of this section will be acted upon only by formal written order, and operation for which such authorization is sought may not commence except in accordance with such order. The Commission will issue public notice that the application is ineligible for streamlined processing. Within 90 days of the public notice, the Commission will issue an order acting upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

5. § 63.13 is revised to read as follows:

§ 63.13 Procedures for modifying regulatory classification of U.S. international carriers from dominant to non-dominant.

Any party that desires to modify its regulatory status from dominant to non-dominant for the provision of particular international communications services on a particular route should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

6. § 63.14 is revised to read as follows:

§ 63.14 Prohibition on agreeing to accept special concessions.

(a) Any carrier authorized to provide international communications service under this part shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, as described in paragraph (c) of this section, and from agreeing to accept special concessions in the future. For purposes of this section, ''foreign carrier'' is defined in § 63.18(h)(1)(ii).

(b) For purposes of this section and §§ 63.11(c)(2)(ii) and 63.18(i), a special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of basic telecommunications services where the arrangement is not offered to similarly situated U.S.-licensed carriers and involves:

(1) Operating agreements for the provision of basic services;

(2) Distribution arrangements or interconnection arrangements, including pricing, technical specifications, functional capabilities, or other quality and operational characteristics, such as provisioning and maintenance times; or

(3) Any information, prior to public disclosure, about a foreign carrier's basic network services that affects either the provision of basic or enhanced services or interconnection to the foreign country's domestic network by U.S. carriers or their U.S. customers.

(c) A U.S. carrier that seeks to enter a special concession with a foreign carrier bears the burden of submitting information, as part of the requirement to file the agreement with the Commission pursuant to § 43.51, sufficient to demonstrate that the foreign carrier lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. If the U.S. carrier makes a showing that the foreign carrier lacks 50 percent market share in the international transport and the local access markets on the foreign end of the route, the U.S. carrier will presumptively be allowed to agree to accept the special concession.

(d) Any party that seeks to defeat the presumption in paragraph (c) of this section shall bear the burden of proof upon any issue it raises as to the ability of the foreign carrier to affect competition adversely in the U.S. market.

7. § 63.17 is amended by revising paragraph (b) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

* * * * *

(b) Except as provided in paragraph (b)(4) of this section, a U.S. common carrier, whether a reseller or facilities-based carrier, may engage in ''switched hubbing'' to countries for which the Commission has not authorized the provision of switched basic services over private lines provided the carrier complies with the following conditions:

(1) U.S.-outbound switched traffic shall be routed over the carrier's authorized U.S. international private lines to a country for which the Commission has authorized the provision of switched services over private lines (i.e., the ''hub'' country), and then forwarded to the third country only by taking at published rates and reselling the international message telephone service (IMTS) of a carrier in the hub country;

(2) U.S.-inbound switched traffic shall be carried to a country for which the Commission has authorized the provision of switched services over private lines (i.e., the ''hub'' country) as part of the IMTS traffic flow from a third country and then terminated in the United States over U.S. international private lines from the hub country;

(3) U.S. common carriers that route U.S.-billed traffic via switched hubbing shall tariff their service on a ''through'' basis between the United States and the

ultimate point of origination or termination;

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(6).

8. § 63.18 is amended to revise paragraphs (e), (h) and (i) and to add new paragraph (k) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(e) One or more of the following statements, as pertinent:

(1) If applying for authority to acquire interests in facilities previously authorized by the Commission in order to provide international basic switched, private line, data, television and business services to all international points, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to the terms and conditions of paragraph (e)(1) of this section.

(ii) Comply with the following terms and conditions:

(A) Authority to provide services to all international points under this part extends to those countries for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If an applicant is affiliated with a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)), the applicant shall not commence service on any such route until it receives specific authority to do so under paragraph (e)(6) of this section.

(B) The applicant may only provide service using half-circuits on appropriately licensed U.S. common and non-common carrier facilities (under either Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. 34 et al.) provided that these facilities do not appear on an exclusion list published by the Commission and any necessary overseas connecting facilities. Applicants may not use non-U.S. licensed facilities unless and until the Commission specifically approves their use and so indicates on the exclusion list, and only then for service to the countries indicated thereon.

(C) The applicant may provide service to any country not included on an exclusion list published by the Commission.

(D) The applicant may provide international basic switched, private line, data, television and business services.

(E) The authority granted under this paragraph shall be subject to all Commission rules and regulations and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See § 63.12.

(2) If applying for authority to resell the international services of authorized U.S. common carriers for the provision of international basic switched, private line, data, television and business services to all international points, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to the terms and conditions of § 63.18(e)(2).

(ii) Comply with the following terms and conditions:

(A) Authority to provide resold services to all international points under this part extends to those countries and services for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstances, in which case an applicant shall not commence service until it receives specific authority to do so under paragraph (e)(6) of this section:

(*1*) An application to provide switched resold services to a non-WTO Member country where the applicant is affiliated with a foreign carrier; and

(*2*) An application to resell private line services to a destination market where the applicant is affiliated with a foreign carrier and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)).

(B) The applicant may resell the international services of any authorized common carrier, except affiliated carriers regulated as dominant on the route to be served, pursuant to that carrier's tariff or contract duly filed with the Commission, for the provision of international basic switched, private line, data, television and business services to all international points;

(C) The applicant may resell private line services for the provision of international switched basic services only in circumstances where the Commission has specifically authorized the provision of switched basic services over private lines to the particular country at the foreign end of the private line. In making determinations about particular destination countries, the Commission will follow the policies adopted in IB Docket Nos. 96–261 and 97–142 (these documents are available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov). The Commission will provide public notice of its decisions to authorize the provision of switched basic services over private lines to particular countries.

(D) The authority granted under this paragraph shall be subject to all Commission rules and regulations, including the limitation in § 63.21 on the use of private lines for the provision of switched services, and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See §§ 63.12, 63.21.

(3) If applying for authority to provide international switched basic services over resold private lines between the United States and a WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines, the applicant shall demonstrate either that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 or that the country affords resale opportunities equivalent to those available under U.S. law. If applying for authority to provide international switched basic services over resold private lines between the United States and a non-WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines, the applicant shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 and that the country affords resale opportunities equivalent to those available under U.S. law. With regard to showing that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral or multilateral agreements between the administrations involved. Parties must demonstrate that the foreign country at the other end of the private line provides U.S.-based carriers with:

(i) The legal right to resell international private lines, interconnected at both ends, for the provision of switched services;

(ii) Reasonable and nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement;

(iii) Competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and

(iv) Fair and transparent regulatory procedures, including separation between the regulator and operator of international facilities-based services.

(4) Any carrier authorized under this section to acquire and operate international private line facilities other than through resale may use those private lines to provide switched basic services only in circumstances where the Commission has previously authorized the provision of switched services over private lines to the particular country at the foreign end of the private line. The Commission will provide public notice of its decisions to authorize the provision of switched services over private lines to particular countries pursuant to its policies adopted in IB Docket Nos. 96–261 and 97–142. This provision is subject to the following exceptions and conditions:

(i) The applicant shall not initiate such service on a particular route absent a grant of specific authority under paragraph (e)(6) of this section in circumstances where the applicant is affiliated with a carrier in the country at the foreign end of the private line and the Commission has not determined that the foreign carrier lacks sufficient market power in the country at the foreign end of the private line to affect competition adversely in the U.S. market. See § 63.10(a).

(ii) The applicant is subject to all applicable Commission rules and regulations, including the limitation § 63.21 on the use of private lines for the provision of switched services, and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See §§ 63.12, 63.21.

(A) Except as provided in paragraph (e)(4)(ii)(B) of this section, any carrier that seeks to provide international switched basic services over its authorized private line facilities between the United States and a WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 or that the country affords resale opportunities equivalent to those available under U.S. law. With regard to showing that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include the information required by paragraph (e)(3) of this section.

(B) No formal application is required under paragraph (e)(4) of this section in circumstances where the carrier's previously authorized private line facility is interconnected to the public switched network only on one end—either the U.S. or the foreign end—and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

(5) If applying for authority to acquire facilities through the transfer of control of a common carrier holding international Section 214 authorization, or through the assignment of another carrier's existing authorization, the applicant shall complete paragraphs (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Paragraph (g) of this section is not applicable, and only the transferee/assignee needs to complete paragraphs (h) through (k) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(6) If applying for authority to acquire facilities or to provide services not covered by § 63.18(e) (1) through (5), the applicant shall provide a description of the facilities and services for which it seeks authorization. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization. Applicants for new submarine cable facilities also shall include a list of the proposed owners of the cable, their voting interests and ownership interests by segment in the cable.

* * * * *

(h) A certification as to whether or not the applicant is, or has an affiliation with, a foreign carrier.

(1) The certification shall state with specificity each foreign country in which the applicant is, or has an affiliation with, a foreign carrier. For purposes of this certification:

(i) Affiliation is defined to include:

(A) A greater than 25 percent ownership of capital stock, or controlling interest at any level, by the applicant, or by any entity that directly or indirectly controls or is controlled by it, or that is under direct or indirect common control with it, in a foreign carrier or in any entity that directly or indirectly controls a foreign carrier; or

(B) A greater than 25 percent ownership of capital stock, or controlling interest at any level, in the applicant by a foreign carrier, or by any entity that directly or indirectly controls or is controlled by a foreign carrier, or that is under direct or indirect common control with a foreign carrier; or by two or more foreign carriers investing in the applicant in the same manner in circumstances where the foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of basic international telecommunications services in the United States. A U.S. carrier also will be considered to be affiliated with a foreign carrier where the foreign carrier controls, is controlled by, or is under common control with a second foreign carrier already found to be affiliated with that U.S. carrier under this section.

(ii) Foreign carrier is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC–88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

(2) In support of the required certification, each applicant shall also provide the name, address, citizenship and principal businesses of its ten percent or greater direct and indirect shareholders or other equity holders and identify any interlocking directorates.

(3) Each applicant that proposes to acquire facilities through the resale of the international switched or private

line services of another U.S. carrier shall additionally certify as to whether or not the applicant has an affiliation with the U.S. carrier(s) whose facilities-based service(s) the applicant proposes to resell (either directly or indirectly through the resale of another reseller's service). For purposes of this paragraph, affiliation is defined as in paragraph (h)(1)(i) of this section, except that the phrase ''U.S. facilities-based international carrier'' shall be substituted for the phrase ''foreign carrier.''

(4) Each applicant and carrier authorized to provide international communications service under this part is responsible for the continuing accuracy of the certifications required by paragraphs (h)(1) through (3) of this section. Whenever the substance of any such certification is no longer accurate, the applicant/carrier shall as promptly as possible and in any event within thirty days file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10.

(5) Any applicant that seeks to operate as a U.S. facilities-based international carrier to a particular country and that is a foreign carrier in that country, or directly or indirectly controls a foreign carrier in that country, or has an affiliation within the meaning of paragraph (h)(1)(i)(B) of this section with a foreign carrier in that country shall provide the following information:

(i) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or

(ii) The applicant's affiliated foreign carrier lacks sufficient market power in the named foreign country to affect competition adversely in the U.S. market; or

(iii) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's international facilities-based market. An effective competitive opportunities demonstration should address the following factors:

(A) The legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(B) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services;

(C) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(*1*) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(*2*) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(*3*) Protection of carrier and customer proprietary information;

(D) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(E) Any other factors the applicant deems relevant to its demonstration.

(6) Any applicant that proposes to resell the international switched or non-interconnected private line services of another U.S. carrier for the purpose of providing international communications services to the named foreign country and that is a foreign carrier in that country, or directly or indirectly controls a foreign carrier in that country, or has an affiliation within the meaning of paragraph (h)(1)(i)(B) of this section with a foreign carrier in the destination country shall provide the following information (see also paragraph (h)(7) of this section):

(i) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or

(ii) The applicant's affiliated foreign carrier lacks sufficient market power in the named foreign country to affect competition adversely in the U.S. market; or

(iii) The named foreign country provides effective competitive opportunities to U.S. carriers to resell international switched or non-interconnected private line services, respectively. An effective competitive opportunities demonstration should address the following factors:

(A) The legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(B) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for the provision of the relevant resale service;

(C) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(*1*) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(*2*) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(*3*) Protection of carrier and customer proprietary information;

(D) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(E) Any other factors the applicant deems relevant to its demonstration.

(7) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international communications services to the named foreign country and that is a foreign carrier in that country or has an affiliation with a foreign carrier in that country shall either provide in its application a showing that would satisfy § 63.10(a)(3) or state that it will file the quarterly traffic reports required by § 43.61(c) of this chapter.

(8) With respect to regulatory classification under § 63.10, each applicant that certifies that it has an affiliation with a foreign carrier in a named foreign country and that desires to be regulated as non-dominant for the provision of particular international communications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

(i) Each applicant shall certify that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and will not enter into such agreements in the future. This certification shall be viewed as an ongoing representation to the Commission, and applicants/carriers shall immediately inform the Commission if at any time the representations in their certifications are no longer true. Failure to so inform the Commission will be deemed a material misrepresentation to the Commission. For purposes of this section, ''special concession'' is defined in § 63.14(b) and ''foreign carrier'' is defined in paragraph (h)(1)(ii) of this section.

* * * * *

(k) If the applicant desires streamlined processing pursuant to

§ 63.12, a statement of how the application qualifies for streamlined processing.

9. § 63.21 is amended to revise paragraph (a); to redesignate paragraph (e) as paragraph (h); and to add paragraphs (e), (f), and (g) to read as follows:

§ 63.21 Conditions applicable to international Section 214 authorizations.

* * * * *

(a) Carriers may not use their authorized facilities-based or resold international private lines for the provision of switched basic services between the United States and a WTO Member country unless and until the Commission has determined that the country at the foreign end of the private line provides equivalent resale opportunities or that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 (this document is available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov). Carriers may not use their authorized facilities-based or resold international private lines for the provision of switched basic services between the United States and a non-WTO Member country unless and until the Commission has determined that the country at the foreign end of the private line provides equivalent resale opportunities and that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261. (*See* § 63.18(e)(3)–(4).) If at any time the Commission finds, after an initial determination of compliance for a particular country, that the country no longer provides equivalent resale opportunities or that market distortion has occurred in the routing of traffic between the United States and that country, carriers shall comply with enforcement actions taken by the Commission. This condition shall not apply to a carrier's use of its authorized facilities-based private lines to provide service as described in § 63.18(e)(4)(ii)(B).

* * * * *

(e) Authorized carriers may not access or make use of specific U.S. customer proprietary network information that is derived from a foreign network unless the carrier obtains approval from that U.S. customer. In seeking to obtain approval, the carrier must notify the U.S. customer that the customer may require the carrier to disclose the information to unaffiliated third parties upon written request by the customer.

(f) Authorized carriers may not receive from a foreign carrier any proprietary or confidential information pertaining to a competing U.S. carrier, obtained by the foreign carrier in the course of its normal business dealings, unless the competing U.S. carrier provides its permission in writing.

(g) The Commission reserves the right to review a carrier's authorization, and, if warranted, impose additional requirements on U.S. international carriers in circumstances where it appears that harm to competition is occurring on one or more U.S. international routes.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation of Part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k). Interpret or apply 47 U.S.C. 201, 218, 226, 228, 254(k), 276 unless otherwise noted.

2. § 64.1001 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 64.1001 International settlements policy and modification requests.

* * * * *

(b) If the accounting rate referred to in § 43.51(e)(1) of this chapter is lower than the accounting rate in effect in the operating agreement of another carrier providing service to or from the same foreign point, and there is no modification in the other terms and conditions referred to in § 43.51(e)(1) of this chapter, the carrier must file a notification letter under paragraph (e) of this section.

(c) If the amendment referred to in § 43.51(e)(2) of this chapter is a simple reduction in the accounting rate, and there is no modification in the other terms and conditions referred to in § 43.51(e)(2) of this chapter, the carrier must file a notification letter under paragraph (e) of this section.

(d) If the operating agreement or amendment referred to in §§ 43.51(e)(1) and (e)(2) of this chapter is not subject to notification under paragraphs (b) and (c) of this section, the carrier must file a modification request under paragraph (f) of this section.

* * * * *

3. § 64.1002 is revised to read as follows:

§ 64.1002 Alternative settlement arrangements.

(a) A communications common carrier engaged in providing switched voice, telex, telegraph, or packet switched service between the United States and a foreign point may seek approval to enter into an operating agreement with a foreign telecommunications administration containing an alternative settlement arrangement that does not comply with the requirements of § 43.51(e)(1) and § 63.14 of this chapter and § 64.1001 by filing a petition for declaratory ruling in compliance with the requirements of this section.

(b) A petition for declaratory ruling must contain the following:

(1) Information to demonstrate that:

(i) The alternative settlement arrangement is on a route between the United States and a World Trade Organization Member; or

(ii) For an alternative settlement arrangement on a route between the United States and a non-World Trade Organization Member:

(A) The Commission has made a previous determination that the effective competitive opportunities test in § 63.18(h)(5)(iii) of this chapter has been satisfied on the route covered by the alternative settlement arrangement; or

(B) The effective competitive opportunities test in § 63.18(h)(5)(iii) of this chapter is satisfied on the route covered by the alternative settlement arrangement; or

(iii) The alternative settlement arrangement is otherwise in the public interest.

(2) A certification as to whether the alternative settlement arrangement affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies.

(3) A certification as to whether the parties to the alternative settlement arrangement are affiliated, as defined in § 63.18(h)(1)(i) of this chapter, or involved in a non-equity joint venture affecting the provision of basic services on the route to which the alternative settlement arrangement applies.

(4) A copy of the alternative settlement arrangement if it affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies, or if it is between parties that are affiliated, as defined in § 63.18(h)(1)(i) of this chapter, or that are involved in a non-equity joint venture affecting the provision of basic services on the route

to which the alternative settlement arrangement applies.

(5) A summary of the terms and conditions of the alternative settlement arrangement if it does not come within the scope of paragraph (b)(4) of this section. However, upon request by the International Bureau, a full copy of such alternative settlement arrangement must be forwarded promptly to the International Bureau.

(c) If the petition for declaratory ruling contains a certification under paragraph (b)(1)(i) of this section that the proposed alternative settlement arrangement is for service on a route between the United States and a World Trade Organization Member, a party may oppose the petition under paragraph (f) of this section with a showing that the participating carrier on the foreign end of the route does not have multiple (more than one) international facilities-based competitors. In such a case, the petitioning party may make a showing under paragraph (b)(1)(iii) of this section, pursuant to paragraph (g) of this section.

(d) An alternative settlement arrangement filed for approval under this section cannot become effective until the petition for declaratory ruling required by paragraph (a) of this section has been granted under paragraph (f) of this section.

(e) On the same day the petition for declaratory ruling has been filed, the filing carrier must serve a copy of the petition on all carriers providing the same or similar service with the foreign carrier identified in the petition.

(f) All petitions for declaratory ruling shall be subject to a 21-day pleading period for objections or comments, commencing the day after the date of public notice listing the petition as accepted for filing. A petition for declaratory ruling shall be deemed granted as of the 28th day without any formal staff action provided that:

(1) The petition is not formally opposed by a pleading meeting the following criteria:

(i) The caption and text of the pleading make it unmistakably clear that the pleading is intended to be a formal opposition;

(ii) The pleading is served upon the other parties to the proceeding; and

(iii) the pleading is filed within the time period prescribed; or

(2) The International Bureau has not notified the filing carrier that grant of the petition may not serve the public interest and that implementation of the proposed alternative settlement arrangement must await formal staff action on the petition.

(g) If objections or comments are filed, the petitioning carrier may file a response pursuant to § 1.45 of this chapter. Petitions that are formally opposed must await formal action by the International Bureau before the proposed alternative settlement arrangement may be implemented.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[DA 97–2528]

Petitions for Waiver of the Four-Digit Carrier Identification Code (CIC) Implementation Schedule

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 3, 1997, the Network Services Division of the Commission's Common Carrier Bureau, released an Order granting extensions to certain local exchange carriers (LECs) of the January 1, 1998 deadline for implementing four-digit carrier code identification codes (CIC). The Order is intended to respond to waiver requests received from certain LECs.

EFFECTIVE DATE: December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION:

Adopted: December 2, 1997
Released: December 3, 1997

I. Introduction

Carrier identification codes (CICs) are numeric codes that enable local exchange carriers (LECs) providing interstate interexchange access services to identify the interstate interexchange carrier (IXC) that the originating caller wishes to use to transmit its interstate call.[1] LECs use the CICs to route traffic to the proper IXC and to bill for the interstate access service provided. CICs facilitate competition by enabling callers to use the services of telecommunications service providers either by presubscription or by dialing a carrier access code, or CAC, which incorporates that carrier's unique Feature Group D CIC.[2] Originally, CICs were unique three-digit codes (XXX) and CACs were five-digit codes incorporating the CIC (10XXX).

2. On April 11, 1997, in the *CICs Second Report and Order,*[3] the Commission approved an industry plan to expand Feature Group D CICs from three to four digits on the ground that it was a reasonable method of meeting future demand for CICs as the supply of three-digit codes was exhausted.[4] The industry agreed that as the expansion from three to four-digit CICs occurred, and as carriers replaced their five-digit CACs with seven-digit CACs, a transition, or permissive dialing period, was needed. The industry, however, was unable to agree on the length of the transition.[5] In its 1994 *CICs NPRM,* the Commission proposed a six-year period.[6] In the *CICs Second Report and Order,* however, because of the rapidly depleting pool of available three-digit

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[1] Most access providers are incumbent local exchange carriers (incumbent LECs) that provide access customers with circuits that interconnect to the local carrier's public switched telephone network. Commission rules require that ''interstate access services should be made available on a non-discriminatory basis and, as far as possible, without distinction between end user and IC [interexchange carrier] customers.'' Petition of First Data Resources, Inc., Regarding the Availability of Feature Group B Access Service to End Users, *Memorandum Opinion and Order,* 1986 WL 291786 (rel. May 28, 1986) at para. 13. Typical access customers include interexchange carriers, wireless carriers, competitive access providers, and large corporate users.

[2] Feature Group D access, or ''equal access,'' is known in the industry as ''One-plus'' (''1+'') dialing. This type of access allows calls to be routed directly to the caller's carrier of choice. Feature Group D/equal access offers features, including presubscription, not generally available through other forms of access. In 1988, the Industry Carriers Compatibility Forum (ICCF), operating under the Alliance for Telecommunications Industry Solutions (ATIS), Carrier Liaison Committee (CLC), began to develop a two-part plan to convert and expand three-digit Feature Group D CICs to four digits. The second part of the plan, originally scheduled to occur in the third quarter of 1993, contemplated expansion of three-digit Feature Group D CICs to four digits and eventual elimination of the 10XXX CAC format. *See* Letter of October 13, 1989, from G.J. Handler, Vice President, Network Planning, Bell Communications Research (Bellcore), to Richard M. Firestone, Chief, Common Carrier Bureau, Federal Communications Commission at 2 (Handler Letter). The ICCF's plan was published in 1991. *See Expansion of Carrier Identification Code Capacity for Feature Group D (FGD),* Bellcore Technical Reference TR–NWT–001050, Issue 1 (April 1991) (ICCF Expansion Plan, April 1991). In 1994, the expansion of Feature Group D CICs was scheduled for the first quarter of 1995. *See* Administration of the North American Numbering Plan, *Notice of Proposed Rulemaking,* CC Docket No. 92–237, 9 FCC Rcd 2068, 2076 (1994) (59 FR 24103 (5/10/94) (*CICs NPRM*). In January 1997, the ICCF became part of the Network Interconnection Interoperability Forum (NIIF), which also operates under the auspices of the CLC.

[3] Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Second Report and Order,* CC Docket No. 92–237, FCC 97–125 (released April 11, 1997) (62 FR 19056 (April 18, 1997)) (*CICs Second Report and Order*).

[4] *See CICs Second Report and Order* at para. 28.

[5] *See* Handler Letter at 2.

[6] *See CICs NPRM,* 9 FCC Rcd at 2076–77.