designated to provide services. A Head Start grantee that is not receiving funding to provide Head Start services in the particular service area would be ineligible for a priority in selection to serve that community under section 641(c) because it is not eligible for selection as a Head Start grantee within the community under section 641(a). Therefore, 45 CFR 1302.12 is no longer needed in the regulation. (The 1998 Head Start reauthorization, however, provides priority to a delegate agency that functioned in the community when the Secretary is designating a Head Start agency but this change would not affect this NPRM.)

Eliminating § 1302.12 will clarify that priority applies to the annual refunding of existing grantees providing services within their communities, not to other circumstances such as selection of a replacement grantee. Section 641(a) provides the relevant guidance in these cases by specifying that ''[t]he Secretary is authorized to designate as a Head Start agency any *local* public or private nonprofit or for-profit agency, *within a community . . .*'' (emphasis added). A Head Start agency's approved service area defines the community it is serving. A geographic area outside the grantee's approved service area (e.g., the service area of a grantee that has left the program) would not be within its community and thus priority would not apply.

We want to emphasize that this proposed rule does not affect in any way the annual refunding of existing grantees to continue to provide Head Start services in their approved service area. Grantees will continue to receive this priority for funding without interruption. Only when a grantee is terminated or relinquishes its grant, and the service area thus has no provider, does this proposed rule have an effect.

## III. Impact Analysis

*Executive Order 12866*

Executive Order 12866 require that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that the removal of 45 CFR 1302.12 is consistent with these priorities and principles.

*Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act (5.U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities'' an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. Removal of section 1302.12 will not affect any Head Start grantees, including those that are small entities. The change brings the regulations into conformity with requirements of the regulations and the statute.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. The removal of section 1302.12 is not affected by the PRA requirement.

## List of Subjects in 45 CFR Part 1302

Education of disadvantaged, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: October 19, 1998.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

Approved: December 10, 1998.

**Donna E. Shalala,**

*Secretary.*

For the reasons set forth in the Preamble, 45 CFR part 1302 is proposed to be amended to read as follows:

## PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

1. The authority citation for part 1302 is revised to read as follows:

**Authority:** 42 U.S.C. 9801 *et seq.*

2. Section 1302.12 is removed.

[FR Doc. 99–7220 Filed 3–23–99; 8:45 am]

BILLING CODE 4184–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 51

**[CC Docket No. 99–68; FCC 99–38]**

## Inter-Carrier Compensation for ISP-Bound Traffic

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On February 26, 1999, the Commission released a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 99–68 concerning compensation between carriers for the delivery of traffic bound for Internet service providers (ISPs). The NPRM initiates a proceeding to determine, on a prospective basis, a federal inter-carrier compensation mechanism. It tentatively concludes that private negotiations driven by market forces are more likely to lead to efficient outcomes than are rates set by regulation. This document also seeks comment on an alternative proposal under which this Commission would establish rules governing inter-carrier compensation for ISP-bound traffic and resolve disputes through a federal arbitration process.

**DATES:** Comments are due on or before April 12, 1999 and reply comments are due on or before April 27, 1999.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth St., S.W., Room TW-A325, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Tamara Preiss, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

**SUPPLEMENTARY INFORMATION:** This summarizes the Commission's Notice of Proposed Rulemaking in CC Docket No. 99–68, Inter-Carrier Compensation for ISP-Bound Traffic, FCC 99–38, adopted February 25, 1999, and released February 26, 1999. The NPRM seeks comment on the tentative conclusion that inter-carrier compensation should be governed prospectively by interconnection agreements negotiated and arbitrated under Sections 251 and 252 of the Act (47 U.S.C. 251, 252). State commissions would arbitrate disputes if parties fail to agree on a compensation mechanism. The file in its entirety is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc.; 1231 20th St., N.W., Washington, D.C. 20036, phone (202) 857–3800.

## Analysis of proceeding

## A. Discussion

1. The Commission does not have an adequate record upon which to adopt a rule regarding inter-carrier compensation for ISP-bound traffic. It does believe, however, that adopting such a rule to govern prospective compensation would serve the public interest. As a general matter, the Commission tentatively concludes that

our rule should strongly reflect our judgment that commercial negotiations are the ideal means of establishing the terms of interconnection contracts. The Commission seeks comment on two alternative proposals for implementing such a regime. Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic. As discussed, the Commission's holding that parties' agreements, as interpreted by state commissions, should be binding also applies to those state commissions that have not yet addressed the issue.

2. For the traffic at issue here, the Commission tentatively conclude that a negotiation process, driven by market forces, is more likely to lead to efficient outcomes than are rates set by regulation. In addition, setting a rate by regulation appears unwise because the actual amounts, need for, and direction of inter-carrier compensation might reasonably vary depending on the underlying commercial relationships with the end user, and who ultimately pays for transmission between its location and the ISP. The Commission acknowledges that, no matter what the payment arrangement, LECs incur a cost when delivering traffic to an ISP that originates on another LEC's network. The Commission believes that efficient rates for inter-carrier compensation for ISP-bound traffic are not likely to be based entirely on minute-of-use pricing structures. In particular, pure minute-of-use pricing structures are not likely to reflect accurately how costs are incurred for delivering ISP-bound traffic. For example, flat-rated pricing based on capacity may be more cost-based. Parties also might reasonably agree to rates that include a separate call set-up charge, coupled with very low per-minute rates. These economic characteristics of this traffic are likely to make voluntary agreements among the parties easier to reach. For these reasons, the Commission proposes that inter-carrier compensation rates for ISP-bound traffic be based on commercial negotiations undertaken as part of the broader interconnection negotiations between incumbent LECs and CLECs. The Commission seeks comment below on two alternative proposals to govern the negotiations with respect to ISP-bound traffic.

3. The Commission tentatively concludes that, as a matter of federal policy, the inter-carrier compensation for this interstate telecommunications traffic should be governed prospectively by interconnection agreements negotiated and arbitrated under Sections 251 and 252 of the Act. Resolution of failures to reach agreement on inter-carrier compensation for interstate ISP-bound traffic then would occur through arbitrations conducted by state commissions, which are appealable to federal district courts. As with other issues on which parties petition state commissions for arbitration under Section 252 of the Act, if a state commission fails to act, the Commission will assume the responsibility of the state commission within 90 days of being notified of such failure. 47 U.S.C. 252(e)(5). This proposal could help facilitate the policy goals set forth by forcing the parties to hold a single set of negotiations regarding rates, terms, and conditions for interconnected traffic and to submit all disputes regarding interconnected traffic to a single arbitrator. The Commission seeks comment on this tentative conclusion.

4. The Commission also seeks comment on an alternative proposal that it adopt a set of federal rules governing inter-carrier compensation for ISP-bound traffic pursuant to which parties would engage in negotiations concerning rates, terms, and conditions applicable to delivery of interstate ISP-bound traffic. These negotiations would commence on the effective date of the adopted rule but could proceed in tandem with broader interconnection negotiations between the parties. The Commission realizes, however, that the success of any negotiation over rates is likely to depend on the availability of the swift and certain resolution of disputes, and the structure of the resolution process. For example, the Commission, through delegation to the Common Carrier Bureau, might resolve such disputes, at the request of either party, through an arbitration-like process, following a discrete period of voluntary negotiation. The Commission seeks comment on how such an approach would operate procedurally and what costing standards the Commission might use in arbitrating disputes. The Commission also seeks comment on how this proposal compares with a broad interconnection negotiation in which most disputes are resolved by a state arbitrator but disputes regarding ISP-bound traffic are resolved through a federal arbitration-like process. The Commission also seeks comment on whether it is possible, as a technical matter, to segregate intrastate and interstate ISP-bound traffic and whether any federal rules it adopts should apply to all intrastate and interstate ISP-bound traffic.

5. The Commission also seeks comment on whether the Commission has the authority to establish an arbitration process that is final and binding and not subject to judicial review. For instance, the Commission notes that parties might agree to binding arbitration pursuant to the Administrative Dispute Resolution Act. Administrative Dispute Resolution Act, Public Law 101–552, 104 Stat. 2738, *codified* at 5 U.S.C. 571 *et seq.* The Commission seeks comment on whether and how such a system should be implemented. In particular, it seeks comment on the desirability of arbitration before an arbitrator selected by the parties, as provided by the Administrative Dispute Resolution Act, as opposed to a federal or state decision-maker. *See* 5 U.S.C. 577.

6. The Commission also invites parties to submit alternative proposals for inter-carrier compensation for interstate ISP-bound traffic that will advance our policy goals in this area. For example, Ameritech has proposed basing inter-carrier compensation for ISP-bound traffic on sharing the incumbent LEC's revenue associated with the interconnected ISP-bound traffic. The Commission also request parties to comment on how any alternatives they propose will advance its goals of ensuring the broadest possible entry of efficient new competitors, eliminating incentives for inefficient entry and irrational pricing schemes, and providing to consumers as rapidly as possible the benefits of competition and emerging technologies.

7. The Commission is aware that disputes may arise regarding various terms and conditions for inter-carrier compensation for ISP-bound traffic. Although many such disputes could be resolved through a negotiation and arbitration process, the Commission seeks comment on whether there are any issues under our two proposals that it can and should address in the first instance through rules rather than through arbitration. The Commission requests parties to comment on the need for rules pertaining to such matters and, to the extent that parties believe that rules are appropriate, the substance and degree of specificity of such rules. The Commission emphasizes, however, that it does not seek comment on whether interstate access charges should be imposed on ESPs as part of this proceeding. The Commission recently reaffirmed that exemption in the *Access Charge Reform Order,* and it does not reconsider it here. *Access Charge Reform Order.*

8. Pursuant to Section 252(i) of the Act, interconnection agreements often have clauses (often referred to as ''most-favored nation'' or ''MFN'' provisions) that allow parties to select, to varying degrees of specificity, provisions from other parties' interconnection

agreements with that particular LEC. 47 U.S.C. 252(i). The Commission understands that an arbitrator recently permitted a CLEC to exercise MFN rights to opt into an interconnection agreement that an incumbent LEC previously had negotiated with another CLEC. That interconnection agreement, executed in July 1996, has a three-year term. The arbitrator concluded that the new CLEC was entitled to opt into the agreement for a new three-year term, thus raising the possibility that the incumbent LEC might be subject to the obligations set forth in that agreement for an indeterminate length of time, without any opportunity for renegotiation, as successive CLECs opt into the agreement. The Commission seeks comment, therefore, on whether and how section 252(i) and MFN rights affect parties' ability to negotiate or renegotiate terms of their interconnection agreements.

9. As discussed, not all ISP-bound traffic is interstate. The Commission seeks comment on whether it should adopt rules for the interstate traffic that would coexist with state rules governing the intrastate traffic, or whether it is too difficult or inefficient to separate intrastate ISP-bound traffic from interstate ISP-bound traffic. The Commission further seeks comment on the technical and practical implications of requiring the separation of intrastate and interstate ISP-bound traffic. In addition, it seeks comment on the implications of various proposals regarding inter-carrier compensation for ISP-bound traffic on the separations regime, such as the appropriate treatment of incumbent LEC revenues and payments associated with the delivery of such traffic. This Commission is mindful of concerns that our jurisdictional analysis may result in allocation to different jurisdictions of the costs and revenues associated with ISP-bound traffic, and the Commission wishes to make clear that it has no intention of permitting such a mismatch to occur. With respect to current arrangements, the Commission notes that this order does not alter the long-standing determination that ESPs (including ISPs) can procure their connections to LEC end offices under intrastate end-user tariffs, and thus for those LECs subject to jurisdictional separations both the costs and the revenues associated with such connections will continue to be accounted for as intrastate.

**B. Procedural Matters**

*1. Ex Parte Presentations*

This Notice of Proposed Rulemaking is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex Parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required. *See generally* 47 CFR 1.1200, 1.1202, 1.1204, 1.1206.

*2. Initial Regulatory Flexibility Analysis*

11. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (Notice). See* 5 U.S.C. 603. Written public comments are requested on the IRFA. These comments must be filed by the deadlines for comment on the remainder of the *Notice,* and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *Notice,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA), in accordance with the RFA, 5 U.S.C. 603(a).

12. *Need for and Objectives of the Proposed Rules.* The Commission tentatively conclude that it should adopt a rule regarding inter-carrier compensation for ISP-bound traffic that strongly reflects our judgment that commercial negotiations are the ideal means of establishing the terms of interconnection contracts. The Commission seeks comment on two alternative proposals for implementing such a regime. Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic. In light of comments received in response to the *Notice,* the Commission might issue new rules or alter existing rules.

13. *Legal Basis.* The legal basis for any action that may be taken pursuant to the *Notice* is contained in Sections 1, 2, 4, 201, 202, 274, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201, 202, 251, 252, and 303(r).

14. *Description and Estimate of the Number of Small Entities That May Be Affected by the Notice of Proposed Rulemaking.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by SBA. 15 U.S.C. 632. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees. *See* 13 CFR 121.201. Consistent with prior practice, the Commission excludes small incumbent local exchange carriers (LECs) from the definition of ''small entity'' and ''small business concern.'' Although such a company may have 1,500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field of operations or are not independently owned and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, the Commission will consider small incumbent LECs within this present analysis and use the term ''small incumbent LECs'' to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

15. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number includes a variety of different categories of carriers, including local exchange carriers (both incumbent and competitive), interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not ''independently owned or operated.'' 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are either small entities or small incumbent LECs that may be affected by this Notice.

16. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange services.

The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which it is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, or are dominant, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 1,371 small providers of local exchange service are small entities or small incumbent LECs that may be affected by the Notice.

17. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* As a result of rules that the Commission may adopt, incumbent LECs and CLECs may be required to discern the amount of traffic carried on their networks that is bound for ISPs. In addition, such incumbent LECs and entrants may be required to produce information regarding the costs of carrying ISP-bound traffic on their networks.

18 *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Alternatives Considered.* As noted, the Commission proposes to adopt rules that may require incumbent LECs and CLECs to discern the amount of traffic carried on their networks that is bound for ISPs. The Commission anticipates that if it adopts such rules, incumbent LECs and CLECs, including small entity incumbent LECs and CLECs, will be able to receive compensation for the delivery of ISP-bound traffic that they might not otherwise receive. The Notice also requests comment on alternative proposals.

19. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

*3. Comment Filing Procedures*

20. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 12, 1999, and reply comments on or before April 27, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 Fed. Reg. 24,121 (1998).

21. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail message to ecfs@fcc.gov and include ''get form <your e-mail address>'' in the body of the message. A sample form and directions will be sent in reply.

22. Parties that choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW–A325, Washington, DC 20554.

23. Parties that choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Harris, Federal Communications Commission, Common Carrier Bureau, Competitive Pricing Division, 445 Twelfth St., S.W., Fifth Floor, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case, CC Docket No. 99–68); type of pleading (comment or reply comment); date of submission; and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20036.

## V. Ordering Clauses

24. Accordingly, *it is ordered,* pursuant to Sections 1, 4 (i) and (j), 201–209, 251, 252, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 251, 252 and 403, that this Notice of Proposed Rulemaking *is hereby adopted* and comments *are requested.*

25. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–7160 Filed 3–23–99; 8:45 am]

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## DEPARTMENT OF ENERGY

## 48 CFR Part 970

**RIN 1991–AB36**

## Acquisition Regulation: Costs Associated With Whistleblower Actions

**AGENCY:** Department of Energy.

**ACTION:** Supplemental proposed rule; notice of limited reopening of comment period.

**SUMMARY:** On January 5, 1998, the Department of Energy (DOE or Department) published a notice of proposed rulemaking (NOPR) to amend the Department of Energy Acquisition Regulations (DEAR) to incorporate a contract reform initiative concerning costs associated with defense of whistleblower actions. DOE has issued this document to invite public comments on alternate regulatory text that DOE is considering. The alternate text would implement a cost principle instead of a contract clause approach, and it would expand the coverage of the proposed DEAR revision to include allowability of labor settlement costs generally.

**DATES:** Written comments must be submitted no later than April 23, 1999.

**ADDRESSES:** Comments should be addressed to: Terrence D. Sheppard, Office of Procurement and Assistance Policy (MA–51), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585–0705.

**FOR FURTHER INFORMATION CONTACT:** Terrence D. Sheppard (202) 586–8193; fax (202) 586–0545; e-mail terry.sheppard@hq.doe.gov.