

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

Dated: January 8, 2002.

Robert F. Shea, Jr.,

Acting Administrator, Federal Insurance and Mitigation Administration.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[IB Docket No. 00-106, FCC 01-332]

Review of Commission Consideration of Applications Under the Cable Landing License Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts streamlining procedures for processing applications for submarine cable landing licenses. The Commission initiated this proceeding to consider measures to facilitate the expansion of capacity and facilities-based competition in the submarine cable market. The Commission adopted measures designed to enable international carriers to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both the industry and government, while preserving the Commission's ability to guard against anti-competitive behavior.

DATES: Effective March 15, 2002 except for §§ 1.767(a)(7) through (a)(9), (a)(11), (g)(1) through (g)(14), (j), (k), (l)(1) and (l)(2) and (m)(1) through (m)(2); and §§ 1.768(a) through (i) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. Public comments on the information collection requirements are due on or before February 13, 2002. OMB must submit written comments on the information collection requirements on or before March 15, 2002.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW-B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington,

DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to toedward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Peggy Reitzel, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418-1499. For additional information concerning the information collections contained in this document contact Judy Boley at (202) 418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 01-332, adopted on November 8, 2001, and released on December 14, 2001. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at <http://www.fcc.gov/bureaus/international/Orders/2001/fcc01332.txt>. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, Telephone: 202-863-2893. Fax: 202-863-2898, e-mail qualexint@aol.com.

Summary of Report and Order

1. On June 8, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in which it proposed streamlining procedures for applications seeking submarine cable landing licenses (65 FR 41613, July 6, 2000). This proceeding was one of a series of such efforts the Commission has undertaken to benefit U.S. consumers by expediting regulatory processing and enhancing the competitiveness of service providers in the global communications marketplace.

2. On November 8, 2001, the Commission adopted a Report and Order (Order) in this proceeding that focused on the objectives set out in the NPRM: (1) To institute an expedited licensing process to speed the deployment of cable capacity to the market; (2) to ensure careful Commission review of certain applications to guard against anti-competitive behavior, and (3) to adopt a pro-competitive model that could be used around the world.

3. The NPRM contained streamlining options that commenters found to be too

complex and burdensome. In response to the comments, the Commission adopted a streamlining approach that tracks the streamlining procedures currently used for section 214 authorizations of international telecommunications services.

4. The Commission developed an approach under which most applications should be streamlined. An application will qualify for streamlined processing if the applicants have no affiliation with a carrier that possesses market power in the cable's destination markets. If an applicant has an affiliation with a carrier with market power in any of the cable's World Trade Organization (WTO) Member destination markets, the application will be eligible for streamlined processing if each applicant with such foreign carrier affiliation certifies that it will accept standard competitive safeguards. An application that includes an applicant that is, or is affiliated with, a carrier that has market power in a cable's non-WTO Member destination market will not be eligible for streamlining. To determine affiliation, the Order applies the twenty-five percent (25%) ownership affiliation standard that is currently applied to international section 214 and cable landing license applications.

5. The standard competitive safeguards are designed to detect and deter harm to competition in the United States that may result from a foreign carrier's market power. The safeguards include a requirement to file quarterly provisioning and maintenance reports and quarterly circuit status reports. Licensees concerned about public disclosure of the reports will be able to request a standard protective order for confidential treatment of the information.

6. The Order's competitive safeguards also include a "no special concessions" rule that prohibits all licensees from directly or indirectly agreeing to accept a "special concession" from a foreign carrier with market power in one or more of the cable's destination markets. The Order defines a special concession as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and

interconnection to the public switched telecommunications network. The rule will apply to all licenses issued after the effective date of the Order. In addition, existing licensees may seek to modify their licenses to substitute this targeted safeguard for the current prohibition against any exclusive arrangements.

7. The Order also adopted a requirement that all cable landing licensees, like international section 214 carriers, must notify the Commission of any foreign carrier affiliations acquired after the issuance of a license where the affiliation is with a carrier in a market at the foreign end of the cable. This rule will be applied to all licensees of all submarine cables, whether authorized by the Commission prior to or after the effective date of the rules adopted herein. The Commission concluded that this rule would provide additional protection against possible anti-competitive conduct.

8. Streamlined processing is optional, and thus applicants may elect to file under the traditional procedures. Moreover, although the Order did not mandate electronic filing of applications, applicants are encouraged to file electronically. Applications that meet the criteria for streamlined processing will be acted upon in a period of forty-five (45) days following the public notice announcing the application as acceptable for filing and eligible for streamlining. Applications acceptable for filing but ineligible for streamlining will be acted upon within ninety (90) days unless the Commission notifies the applicant that the application presents issues that require additional scrutiny, in which case the Commission will extend the review for another ninety (90) days. The Commission delegated to the International Bureau the authority to identify particular applications that, although otherwise eligible for streamlining, may warrant additional public comment and require consideration on a case-by-case basis.

9. The Commission declined to adopt a specific timeframe by which it will issue public notices of applications accepted for filing. Rather, it will continue its practice of issuing public notices of applications accepted for filing in an expeditious manner. The Commission adopted the procedure used for section 214 applications of not routinely removing applications from streamlining based on the filing of comments on competitive or other issues that a party might seek to raise. In addition, the Commission adopted its proposal to grant applications by public notice unless a formal written order is deemed necessary.

10. The Commission adopted a new rule that will require fewer entities to become applicants/licensees. Only the following entities will be required to be applicants for a cable landing license: an entity that (1) owns or controls a landing station in the United States; or (2) owns or controls a five percent (5%) or greater interest in the cable system and will use the U.S. points of the cable system. In addition, the Commission established a process for an existing licensee that is not a U.S. landing party and owns or controls less than five percent (5%) of the cable system to seek removal from a submarine cable landing license. The Commission also clarified its rule that once an entity is a licensee, it is subject to the Commission's rules for modifications, assignments and transfers of control of interests in cable landing licenses, even where these interests are less than five percent (5%). The Commission will continue to require applicants for a cable landing license to identify all original owners, including those with less than five percent (5%) interest.

11. The Commission reminded applicants seeking common carrier landing licenses that, in addition to the cable landing license application, they must file an application for section 214 authority for the construction of new lines under § 63.18(e)(4) of the Commission's rules.

12. The Commission adopted a new process designed to replace prior review of *pro forma* transactions with a post-transaction notification procedure, thereby allowing entities to proceed with their *pro forma* transactions without delay. In addition, the Commission provided that an existing licensee may file an application to modify its license to take advantage of this post-transaction notification procedure.

13. To provide clear and publicly available conditions for licenses, the Commission codified routine conditions that traditionally have been attached to all cable landing licenses. In addition, the Commission codified the new streamlining procedures, the no special concessions rule for all licensees, the reporting requirements, the *pro forma* procedures, and the applicant-licensee rule.

14. The Order also addressed other issues raised in the NPRM or by commenters. The Commission declined to eliminate the distinction between cables operated on a common carrier and private carrier basis. The Commission suggested that parties seeking modifications to existing fee structures pursue these requests through the annual rulemaking process

specifically designated for this purpose. The Commission declined to adopt suggestions to reduce the ownership information required in cable landing license and section 214 applications, deferring this issue to its 2002 biennial review of all of its rules. The Commission clarified its rule regarding the type of information an applicant must provide in its specific description of cable landing stations.

Procedural Matters

15. *Paperwork Reduction Act.* The Order contained modified information collections. 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 the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due February 13, 2002. OMB notification of action is due March 15, 2002. Comments should address the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060-0944.

Title: Applications under the Cable Landing License Act.

Form Number: N/A.

Type of Review: Revised collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 25.

Number of Responses: 271.

Estimated Time Per Response: An average of 4 hours per response.

Frequency of Response: On Occasion. Third party disclosure.

Total Annual Burden: 995 hours.

Total Annual Costs: \$352,425.

Needs and Uses: The information will be used by the Commission to determine the qualifications of applicants 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 are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or

involved in similar arrangements with, foreign carriers that have sufficient market power to affect competition adversely in the U.S. market. In addition, the Commission must maintain records that accurately reflect a party or parties that control a carrier's operations, particularly for purposes of enforcing the Commission's rules and policies.

16. *Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Review of Commission Consideration of Applications under the Cable Landing License Act, Notice of Proposed Rulemaking (NPRM). The Commission sought written public comment on the proposals of the NPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. (5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

A. Need for, and Objectives of, the Report and Order

17. In recent years, there has been growth in the number and capacity of submarine cables triggered in large part by increased Internet and data traffic. Because of this increased demand for capacity, the rapid pace of technological development, and the emergence of non-traditional ownership and financing structures in the submarine cable marketplace, the International Bureau reviewed its policies for licensing submarine cables. As a result of the review, the Commission initiated this proceeding.

18. The Order adopts streamlining procedures for processing applications for submarine cable landing licenses. The streamlining procedures are designed to promote the expansion of capacity and facilities-based competition in the submarine cable market, which should increase innovation and lower prices for U.S. consumers of international communications services. The measures also are designed to enable international carriers to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both the industry and the government, while preserving the Commission's ability to guard against anti-competitive behavior.

19. The measures adopted in the Order are part of the Commission's

continuing streamlining efforts. We recognize the importance of reducing regulatory costs, providing regulatory certainty, and facilitating the planning of financial transactions. The procedures contained in the Order should allow participants in the submarine cable market to make business decisions more readily.

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

20. There were no comments in response to the IRFA. In general, commenters were very supportive of the agency's proposal to streamline the submarine cable landing license process. However, some commenters were concerned that the options proposed in the NPRM could be burdensome and time-consuming for both applicants and Commission staff, and, instead of expediting the licensing process, could slow the licensing process. Thus, commenters proposed alternatives that more closely resembled the streamlining process currently used by the agency for processing international section 214 authorizations. The Order adopts an approach to streamlining that reflects the concerns raised by commenters.

21. Commenters in this proceeding presented a number of approaches and/or criteria for determining whether an application would be eligible for streamlined processing. The Order adopts an eligibility test for cables to World Trade Organization (WTO) Member countries that focuses on whether the applicants are, or are affiliated with, carriers with market power in the cable's destination market. Cables without such affiliations will be eligible for streamlining. Cables with such affiliations will be eligible if the applicants/licensees with such affiliations comply with reporting requirements that are similar to existing dominant carrier reporting requirements applicable to section 214 carriers that have affiliations with market power carriers in foreign markets. (*See* 47 CFR 63.10). In addition, all licensees will be subject to the prohibition against entering into special arrangements with foreign market-power carriers. The Commission believes that the rules and regulations adopted herein both will respond to the commenters' proposals and preserve the Commission's ability to guard against anti-competitive behavior that could result in harm to consumers in the U.S. market.

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

22. The RFA directs agencies to provide a description of, and, where feasible, estimate of, the number of small entities that may be affected by the proposals, if adopted. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. A small business concern is 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 SBA.

23. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. Some of these telephone communications companies may have ownership interests in submarine cables or use such cables to provide international service. The Census Bureau reports that there were 2,321 such companies that had been operating for at least one year at the end of 1992. According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons. All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 2,295 or fewer of these wireline companies are small entities that might be affected by these proposals.

24. The streamlining measures contained in the Order are available to entities applying for a license to land or operate submarine cables under the Cable Landing License Act (or entities applying to assign or transfer control of interests in existing submarine cable landing licenses). The measures, however, may indirectly affect other entities as well, including users of submarine cable service such as Internet

service providers (ISPs) that lease capacity or purchase indefeasible rights of use (IRUs) on cable systems. The policies and rules adopted in the Order will reduce the burden on all applicants regardless of size, by permitting applicants to seek to have their applications granted in a more expeditious manner. We do not have precise numbers for the small entities that will be affected by the policies and rules. Agency data indicates there have been approximately 50 cable landing applications filed with the Commission since 1992, but the total number of licensees at any particular time is difficult to determine, because many licenses are jointly held by several licensees and assignments and transfers of control of interests occur on a regular basis. Based on this information, we would estimate that, over the next five years, the streamlining procedures may benefit as many as 50 applicants meeting the SBA definition of a small entity.

25. In addition to expediting the processing of applications, the Order will require fewer entities to become applicants/licensees. This change will further reduce the number of small entities subject to the rules and regulations. Only the following entities will be required to be applicants for a cable landing license: an entity that (1) owns or controls a U.S. landing station; or (2) owns or controls a five percent (5%) or greater interest in the cable system and will use the U.S. points of the cable system. In order to afford existing cable landing licensees this same opportunity, small entities that meet the criteria may request to be removed from the cable landing license.

26. We note that it is difficult to determine with precision the number of small entities that will be affected by this Order. For example, some small entities with less than five percent (5%) ownership may elect to become licensees. We will be able to compile more specific data only after small entities file applications seeking removal from existing cable landing licenses. However, the following example of cable ownership interests will provide a good illustration of the potential number of small entities that could be exempt from the requirements of the Order. According to agency data at the time of application, the percentage of ownership interests for an existing submarine cable system, the TAT-14 cable, were as follows: four U.S. carriers owned five percent (5%) or greater (these four carriers owned a total of 32.57 percent); fifteen U.S. carriers owned less than five percent (5%) (these fifteen carriers owned a total of 16.93

percent); and thirty-two foreign carriers owned the remaining 50.50 percent.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. Any reporting or recordkeeping requirements imposed on small entities will be insignificant. Generally, applicants seeking a cable landing license will submit the same information that is currently required by the rules. Applicants may continue to file for a license under the existing procedures, and some applicants will not meet the eligibility criteria for streamlined processing. Applicants may file electronic or paper applications.

28. We believe that many small entities below the five percent (5%) ownership criteria may decide not to be cable landing license applicants, and therefore, such entities will not be subject to the reporting, recordkeeping, or compliance requirements applicable to licensees. Small entities that are currently licensees, and meet these criteria, may file an application requesting that they be removed from the license. The application would demonstrate that the entity: (1) Does not own or control a U.S. cable landing station; and (2) holds less than five percent (5%) interest in the cable system. The application would be filed with the Commission and copies would be served on each other licensee of the cable system. This burden should be minimal because the information would be readily available from the information that the entity provided at the time of becoming an initial applicant or from other business records showing an increase or decrease of ownership interest. As an existing licensee of a cable landing license, the entity would have ready access to the names and addresses of other licensees. Thus, the service burden also would be minimal.

29. The Order also adopts standard competitive safeguards that will impose additional reporting burdens on certain entities. We believe, however, that very few small entities will be burdened with this requirement. Reporting requirements will be imposed only on those applicants that have an affiliation with a carrier with market power in any of the cable's destination markets. These applicants will be required to provide provisioning and maintenance reports that include: (a) Identification of each facility or service provisioned and/or maintained; (b) for provisioned facilities and services, the volume or quantity provisioned and the order-to-delivery intervals; and (c) for each facility and service, the number of outages and

intervals to restoration. Also, applicants will be required to provide quarterly circuit status reports, on a facility-specific basis, in the format set out by the Commission's annual circuit status manual. If applicants have a concern over the public disclosure of their reports, they may seek confidential treatment of the information and request a standard protective order.

30. The Order also adopts a rule that requires licensees to notify the Commission of new affiliations that they acquire with foreign carriers in a cable's destination market. If the Commission deems it necessary, it will impose on the newly affiliated licensee the reporting requirements discussed above. This rule is similar to the notification rule that applies in the context of international section 214 carriers, *see* 47 CFR 63.11. We believe this reporting requirement will have minimal applicability to small entities because it will apply only to licensees, and it is likely, under our rules, that few small entities (that is, those independently owned and operated companies with no more than 1500 employees) will be required to become licensees.

31. The Order also adopts a new process designed to remove prior Commission review of pro forma assignments or transfers of control of interests in submarine cable landing licenses. Again, this process will have minimal applicability to small entities to the extent they are not cable licensees. Pro forma transactions do not result in a change in the ultimate control of the interest in the cable landing license or in changes to the cable system itself as previously evaluated at the time of the initial license application. Under the Order, a pro forma assignee or a person or company that is the subject of a pro forma transfer of control of an interest in a cable landing license will no longer be required to seek prior approval, but if electing post-transaction notification, must: (1) Notify the Commission no later than thirty (30) days after the pro forma transaction is consummated; (2) certify that the assignment or transfer of control is pro forma, and together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control; and (3) provide an update to any ownership information required by our rules. Under this new rule, the burden of seeking prior approval would be eliminated for most entities, thus allowing them to proceed with their pro forma transaction without delay. Entities would file the same information after the transaction instead of prior to the transaction. The Order provides that

existing licenses could be modified, at a licensee's request, to be subject to this post-transaction process. The licensee would be required to file an application with the Commission seeking a modification of its license to incorporate this limited exception to the prior approval requirement currently set forth in the applicable license condition. This new process will impose a slight burden on applicants that have been granted a cable landing license and wish to take advantage of this new process. Presumably licensees will only subject themselves to this burden if they believe the benefit of expedited post-transaction processing of pro forma assignments or transfers of control will offset any burden. Similarly, the Order states that licensees of previously authorized cables may file applications to modify their licenses to substitute the new, more narrowly tailored "no special concessions" rule for the "no exclusive arrangements" condition contained in existing licenses.

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

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities.

33. In the NPRM, we requested comment on whether small entities would be adversely affected by the proposals and whether the proposals would enable small entities to respond to the demands of the market with minimum regulatory oversight, delays, and expenses. Commenters did not specifically address the impact on small entities. Rather, commenters expressed concerns that the NPRM proposals could be burdensome and time-consuming on all entities. Commenters proposed alternative measures more aligned with the existing section 214 streamlining procedures. As a result, the Order adopts measures that are closely modeled on the streamlining process for international section 214 authorizations which has been successful and not burdensome.

34. The procedures adopted in the Order are designed to provide more certainty and flexibility for applicants, encourage investment and infrastructure development by multiple providers, expand available submarine cable capacity, and decrease application processing time. This decision extends the benefits of streamlined processing to as many applicants as possible, including small entities. It reduces the regulatory and procedural burdens while preserving the Commission's ability to guard against anti-competitive behavior. This streamlined processing may benefit small entities especially because the procedures should facilitate entry by such entities into the submarine cable market and expand international services available to such entities. In addition, we have developed a definition of "licensee" that should permit a large number of small entities to be exempt from the requirements contained in the Order.

35. Finally, the reporting requirements and other measures adopted in the Order will minimize any economic impact on small entities. The reporting requirements, which apply only to certain licensees, will allow the Commission to monitor and detect anti-competitive behavior without imposing unnecessarily burdensome regulations on a U.S. licensee due to its affiliation with a foreign carrier.

36. To simplify compliance with the rules and requirements, the Order codifies the submarine cable landing license conditions. This step will provide clear and publicly available standard conditions for all entities. Also, applicants will no longer be required to submit a letter affirmatively accepting the terms and conditions of the cable landing license.

Report to Congress: The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clauses

37. Accordingly, it is ordered that, pursuant to sections 1, 4(i) and (j), 201–255 303(r) of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–255, 303(r), and the Cable Landing License Act, 47 U.S.C. 34–39 and Executive Order No. 10530, Sec. 5(a), reprinted as amended in 3 U.S.C. 301, this Report and Order *is hereby*

adopted and the Commission's rules, 47 CFR part 1, *are amended* as set forth in the Rule Changes.

38. *It is further ordered* that the policies, rules and requirements established in this decision *shall take effect* March 15, 2002, except for §§ 1.767(a)(7) through (a)(9), (a)(11), (g)(1) through (g)(14), (j), (k), (l)(1) and (l)(2), and (m)(1) through (m)(2); and §§ 1.768(a) through (i) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

39. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications miscellaneous rules relating to common carriers.

Federal Communications Commission.

William F. Caton,
Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.767 is amended by revising paragraphs (a)(5), (a)(7), and (a)(8); redesignating paragraph (a)(9) as (a)(10); adding new paragraphs (a)(9), (a)(11), (g) through (m) to read as follows:

§ 1.767 Cable landing licenses.

(a) * * *

(5) A specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land. The description shall include a map showing specific geographic coordinates, and may also include street addresses, of each landing station. The map must also specify the coordinates of any beach joint where those

coordinates differ from the coordinates of the cable station. The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than ninety (90) days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if the Commission does not notify the applicant otherwise in writing no later than sixty (60) days after receipt of the specific description of the landing points, unless the Commission designates a different time period;

* * * * *

(7) A list of the proposed owners of the cable system, including each U.S. cable landing station, their respective voting and ownership interests in each U.S. cable landing station, their respective voting interests in the wet link portion of the cable system, and their respective ownership interests by segment in the cable;

(8) For each applicant of the cable system, a certification as to whether the applicant is, or is affiliated with, a foreign carrier, including an entity that owns or controls a foreign cable landing station in any of the cable's destination markets. Include the citizenship of each applicant and information and certifications required in § 63.18(h) through (k), and in § 63.18(o), of this chapter;

(9) A certification that the applicant accepts and will abide by the routine conditions specified in paragraph (g) of this section; and

* * * * *

(11) (i) If applying for authority to assign or transfer control of an interest in a cable system, the applicant shall complete paragraphs (a)(1) through (a)(3) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (a)(8) through (a)(9) 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 application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a U.S. cable landing station. 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.

(ii) In the event the transaction requiring an assignment or transfer of control application also requires the filing of a foreign carrier affiliation notification pursuant to § 1.768, the applicant shall reference in the application the foreign carrier affiliation notification and the date of its filing. *See § 1.768. See also* paragraph (g)(7) of this section (providing for post-transaction notification of pro forma assignments and transfers of control).

(iii) An assignee or transferee shall notify the Commission no later than thirty (30) days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification may be by letter and shall identify the file numbers under which the initial license and the authorization of the assignment or transfer were granted.

* * * * *

(g) *Routine conditions.* Except as otherwise ordered by the Commission, the following rules apply to each licensee of a cable landing license granted on or after March 15, 2002:

(1) Grant of the cable landing license is subject to:

(i) All rules and regulations of the Federal Communications Commission;

(ii) Any treaties or conventions relating to communications to which the United States is or may hereafter become a party; and

(iii) Any action by the Commission or the Congress of the United States rescinding, changing, modifying or amending any rights accruing to any person by grant of the license;

(2) The location of the cable system within the territorial waters of the United States of America, its territories and possessions, and upon its shores shall be in conformity with plans approved by the Secretary of the Army. The cable shall be moved or shifted by the licensee at its expense upon request of the Secretary of the Army, whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance and improvement of harbors for navigational purposes;

(3) The licensee shall at all times comply with any requirements of United States government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America;

(4) The licensee, or any person or company controlling it, controlled by it,

or under direct or indirect common control with it, does not enjoy and shall not acquire any right to handle traffic to or from the United States, its territories or its possessions unless such service is authorized by the Commission pursuant to section 214 of the Communications Act, as amended;

(5)(i) The licensee shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier, including any entity that owns or controls a foreign cable landing station, 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 from agreeing to accept special concessions in the future.

(ii) For purposes of this section, 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 to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and interconnection to the public switched telecommunications network.

Note to paragraph (g)(5): Licensees may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the requirements of this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(6) Except as provided in paragraph (g)(7) of this section, the cable landing license and rights granted in the license shall not be transferred, assigned, or disposed of, or disposed of indirectly by transfer of control of the licensee, unless the Federal Communications Commission gives prior consent in writing;

(7) A pro forma assignee or a person or company that is the subject of a pro forma transfer of control of a cable landing license is not required to seek prior approval for the pro forma transaction. A pro forma assignee or person or company that is the subject of a pro forma transfer of control must notify the Secretary, Federal Communications Commission,

Washington, DC 20554, with a copy to the Chief, International Bureau, Federal Communications Commission, no later than thirty (30) days after the assignment or transfer of control is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment or transfer of control was pro forma, as defined in § 63.24(a) of this chapter, and, together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control. A single letter may be filed for an assignment or transfer of control of more than one license issued in the name of a licensee if each license is identified by the file number under which it was granted;

(8) Unless the licensee has notified the Commission in the application of the precise locations at which the cable will land, as required by paragraph (a)(5) of this section, the licensee shall notify the Commission no later than ninety (90) days prior to commencing construction at that landing location. The Commission will give public notice of the filing of each description, and grant of the cable landing license will be considered final with respect to that landing location unless the Commission issues a notice to the contrary no later than sixty (60) days after receipt of the specific description. See paragraph (a)(5) of this section;

(9) The Commission reserves the right to require the licensee to file an environmental assessment should it determine that the landing of the cable at the specific locations and construction of necessary cable landing stations may significantly affect the environment within the meaning of § 1.1307 implementing the National Environmental Policy Act of 1969. See § 1.1307(a) and (b). The cable landing license is subject to modification by the Commission under its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules. See also § 1.1306 note 1 and § 1.1307(c) and (d);

(10) The Commission reserves the right, pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, Executive Order No. 10530 as amended, and section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214, to impose common carrier regulation or other regulation consistent with the Cable Landing License Act on the operations of the cable system if it finds that the public interest so requires;

(11) The licensee, or in the case of multiple licensees, the licensees collectively, shall maintain de jure and

de facto control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license;

(12) The licensee shall comply with the requirements of § 1.768;

(13) The cable landing license is revocable by the Commission after due notice and opportunity for hearing pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, or for failure to comply with the terms of the license or with the Commission's rules; and

(14) The licensee shall notify the Secretary, Federal Commissions Commission, Washington, DC 20554, in writing, within thirty (30) days of the date the cable is placed into service, of the date the cable was placed into service. The cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.

(h) *Applicants/Licensees.* Except as otherwise required by the Commission, the following entities, at a minimum, shall be applicants for, and licensees on, a cable landing license:

(1) Any entity that owns or controls a cable landing station in the United States; and

(2) All other entities owning or controlling a five percent (5%) or greater interest in the cable system and using the U.S. points of the cable system.

(i) *Processing of cable landing license applications.* The Commission will take action upon an application eligible for streamlined processing, as specified in paragraph (k) of this section, within forty-five (45) days after release of the public notice announcing the application as acceptable for filing and eligible for streamlined processing. If the Commission deems an application seeking streamlined processing acceptable for filing but ineligible for streamlined processing, or if an applicant does not seek streamlined processing, the Commission will issue public notice indicating that the application is ineligible for streamlined processing. Within ninety (90) days of the public notice, the Commission will take action 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.

(j) *Applications for streamlining.* Each applicant seeking to use the streamlined

grant procedure specified in paragraph (i) of this section shall caption its application and any cover letter with "Application for Cable Landing License—Streamlined Processing Requested." Applications for streamlined processing shall include the information and certifications required by paragraph (k) of this section. On the date of filing with the Commission, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: U.S. Coordinator, EB/CIP, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520-5818; Office of Chief Counsel/NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230; and Defense Information Systems Agency, Code RGC, 701 S. Courthouse Road, Arlington, Va. 22204, and shall certify such service on a service list attached to the application or other filing.

(k) *Eligibility for streamlining.* Each applicant must demonstrate eligibility for streamlining by:

(1) Certifying that it is not a foreign carrier and it is not affiliated with a foreign carrier in any of the cable's destination markets;

(2) Demonstrating pursuant to § 63.12(c)(1)(i) through (iii) of this chapter that any such foreign carrier or affiliated foreign carrier lacks market power; or

(3) Certifying that the destination market where the applicant is, or has an affiliation with, a foreign carrier is a World Trade Organization (WTO) Member and the applicant agrees to accept and abide by the reporting requirements set out in paragraph (l) of this section. An application that includes an applicant that is, or is affiliated with, a carrier with market power in a cable's non-WTO Member destination country is not eligible for streamlining.

(l) *Reporting Requirements Applicable to Licensees Affiliated with a Carrier with Market Power in a Cable's WTO Destination Market.* Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's WTO Member destination countries, and that requests streamlined processing of an application under paragraphs (j) and (k) of this section, must comply with the following requirements:

(1) File quarterly reports summarizing the provisioning and maintenance of all network facilities and services procured from the licensee's affiliate in that destination market, within ninety (90) days from the end of each calendar quarter. These reports shall contain the following:

(i) The types of facilities and services provided (for example, a lease of wet link capacity in the cable, collocation of licensee's equipment in the cable station with the ability to provide backhaul, or cable station and backhaul services provided to the licensee);

(ii) For provisioned facilities and services, the volume or quantity provisioned, and the time interval between order and delivery; and

(iii) The number of outages and intervals between fault report and facility or service restoration; and

(2) File quarterly circuit status reports, within ninety (90) days from the end of each calendar quarter and in the format set out by the § 43.82 of this chapter annual circuit status manual with the exception that activated or idle circuits must be reported on a facility-by-facility basis and derived circuits need not be specified. See § 63.10(c)(5) of this chapter.

(m) (1) Except as specified in paragraph (m)(2) of this section, amendments to pending applications, and applications to modify a license, including amendments or applications to add a new applicant or licensee, shall be signed by each initial applicant or licensee, respectively. Joint applicants or licensees may appoint one party to act as proxy for purposes of complying with this requirement.

(2) Any licensee that seeks to relinquish its interest in a cable landing license shall file an application to modify the license. Such application must include a demonstration that the applicant is not required to be a licensee under paragraph (h) of this section and that the remaining licensee(s) will retain collectively de jure and de facto control of the U.S. portion of the cable system sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license, and must be served on each other licensee of the cable system.

Note to § 1.767: The terms "affiliated" and "foreign carrier," as used in this section, are defined as in § 63.09 of this chapter except that the term "foreign carrier" also shall include any entity that owns or controls a cable landing station in a foreign market.

3. Add § 1.768 to read as follows:

§ 1.768 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

Any entity that is licensed by the Commission ("licensee") to land or operate a submarine cable landing in a particular foreign destination market that becomes, or seeks to become, affiliated with a foreign carrier that is authorized to operate in that market,

including an entity that owns or controls a cable landing station in that market, shall notify the Commission of that affiliation.

(a) *Affiliations requiring prior notification:* Except as provided in paragraph (b) of this section, the licensee must notify the Commission, pursuant to this section, forty-five (45) days before consummation of either of the following types of transactions:

(1) Acquisition by the licensee, or by any entity that controls the licensee, or by any entity that directly or indirectly owns more than twenty-five percent (25%) of the capital stock of the licensee, of a controlling interest in a foreign carrier that is authorized to operate in a market where the cable lands; or

(2) Acquisition of a direct or indirect interest greater than twenty-five percent (25%), or of a controlling interest, in the capital stock of the licensee by a foreign carrier that is authorized to operate in a market where the cable lands, or by an entity that controls such a foreign carrier.

(b) *Exceptions:* (1) Notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead be filed pursuant to paragraph (c) of this section, if either of the following is true with respect to the named foreign carrier, regardless of whether the destination market where the cable lands is a World Trade Organization (WTO) or non-WTO Member:

(i) The Commission has previously determined in an adjudication that the foreign carrier lacks market power in that destination market (for example, in an international section 214 application or a declaratory ruling proceeding); or

(ii) The foreign carrier owns no facilities in that destination market. For this purpose, a carrier is said to own facilities if it holds an ownership, indefeasible-right-of-user, or leasehold interest in a cable landing station or in bare capacity in international or domestic telecommunications facilities (excluding switches).

(2) In the event paragraph (b)(1) of this section cannot be satisfied, notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead be filed pursuant to paragraph (c) of this section, if the licensee certifies that the destination market where the cable lands is a WTO Member and provides certification to satisfy either of the following:

(i) The licensee demonstrates that its foreign carrier affiliate lacks market

power in the cable's destination market pursuant to § 63.10(a)(3) of this chapter (see § 63.10(a)(3) of this chapter); or

(ii) The licensee agrees to comply with the reporting requirements contained in § 1.767(l) effective upon the acquisition of the affiliation. See § 1.767(l).

(c) *Notification after consummation:* Any licensee that becomes affiliated with a foreign carrier and has not previously notified the Commission pursuant to the requirements of this section shall notify the Commission within thirty (30) days after consummation of the acquisition.

Example 1 to paragraph (c). Acquisition by a licensee (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the licensee) of a direct or indirect interest in a foreign carrier that is greater than twenty-five percent (25%) but not controlling is subject to paragraph (c) of this section but not to paragraph (a) of this section.

Example 2 to paragraph (c). Notification of an acquisition by a licensee of a hundred percent (100%) interest in a foreign carrier may be made after consummation, pursuant to paragraph (c) of this section, if the foreign carrier operates only as a resale carrier.

Example 3 to paragraph (c). Notification of an acquisition by a foreign carrier from a WTO Member of a greater than twenty-five percent (25%) interest in the capital stock of the licensee may be made after consummation, pursuant to paragraph (c) of this section, if the licensee demonstrates in the post-notification that the foreign carrier lacks market power in the cable's destination market or the licensee agrees to comply with the reporting requirements contained in § 1.767(l) effective upon the acquisition of the affiliation.

(d) *Cross-reference:* In the event a transaction requiring a foreign carrier notification pursuant to this section also requires a transfer of control or assignment application pursuant to the requirements of the license granted under § 1.767 or § 1.767(g), the foreign carrier notification shall reference in the notification the transfer of control or assignment application and the date of its filing. See § 1.767(g).

(e) *Contents of notification:* The notification shall certify the following information:

(1) The name of the newly affiliated foreign carrier and the country or countries at the foreign end of the cable in which it is authorized to provide telecommunications services to the public or where it owns or controls a cable landing station;

(2) Which, if any, of those countries is a Member of the World Trade Organization;

(3) The name of the cable system that is the subject of the notification, and the

FCC file number(s) under which the license was granted;

(4) The name, address, citizenship, and principal business of any person or entity that directly or indirectly owns at least ten percent (10%) of the equity of the licensee, and the percentage of equity owned by each of those entities (to the nearest one percent (1%));

(5) Interlocking directorates. The name of any interlocking directorates, as defined in § 63.09(g) of this chapter, with each foreign carrier named in the notification. See § 63.09(g) of this chapter.

(6) With respect to each foreign carrier named in the notification, a statement as to whether the notification is subject to paragraph (a) or (c) of this section. In the case of a notification subject to paragraph (a) of this section, the licensee shall include the projected date of closing. In the case of a notification subject to paragraph (c) of this section, the licensee shall include the actual date of closing.

(7) If a licensee relies on an exception in paragraph (b) of this section, then a certification as to which exception the foreign carrier satisfies and a citation to any adjudication upon which the licensee is relying. Licensees relying upon the exceptions in paragraph (b)(2) of this section must make the required certified demonstration in paragraph (b)(2)(i) of this section or the certified commitment to comply with the reporting requirements in paragraph (b)(2)(ii) of this section in the notification required by paragraph (c) of this section.

(f) If the licensee seeks to be exempted from the reporting requirements contained in § 1.767(l), the licensee should demonstrate that each foreign carrier affiliate named in the notification lacks market power pursuant to § 63.10(a)(3) of this chapter. See § 63.10(a)(3) of this chapter.

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

(1) If the Commission deems it necessary at any time before or after the deadline for submission of public comments, the Commission may impose reporting requirements on the licensee based on the provisions of § 1.767(l). See § 1.767(l).

(2) In the case of a prior notification filed pursuant to paragraph (a) of this section in which the foreign carrier is authorized to operate in, or own a cable landing station in, a non-WTO Member, the licensee must demonstrate that it continues to serve the public interest for

it to retain its interest in the cable landing license for that segment of the cable that lands in the non-WTO destination market by demonstrating either that the foreign carrier lacks market power in that destination market pursuant to § 63.10(a)(3) of this chapter or the market offers effective opportunities for U.S. companies to land and operate a submarine cable in that country. If the licensee is unable to make either required showing or is notified that the affiliation may otherwise harm the public interest pursuant to the Commission's policies and rules under 47 U.S.C. 34 through 39 and Executive Order No. 10530, dated May 10, 1954, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate authorization revocation hearing.

Note to paragraph (g)(2): The assessment of whether a destination market offers effective opportunities for U.S. companies to land and operate a submarine cable will be made under the standard established in *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23946 at paragraph 130, 62 FR 64741, December 9, 1997.

(h) All licensees are responsible for the continuing accuracy of information provided pursuant to this section for a period of forty-five (45) days after filing. During this period if the information furnished is no longer accurate, the licensee shall as promptly as possible, and in any event within ten (10) days, unless good cause is shown, file with the Secretary in duplicate a corrected notification referencing the FCC file numbers under which the original notification was provided.

(i) A licensee that files a prior notification pursuant to paragraph (a) of this section may request confidential treatment of its filing, pursuant to § 0.459 of this chapter, for the first twenty (20) days after filing. Such a request must be made prominently in a cover letter accompanying the filing.

Note to § 1.768: The terms "affiliated" and "foreign carrier," as used in this section, are defined as in § 63.09 of this chapter except that the term "foreign carrier" also shall include an entity that owns or controls a cable landing station in a foreign market.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket 98-156; FCC 01-357]

Certification of Equipment in the 24.05-24.25 GHz Band at Field Strengths up to 2500 mV/m

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to allow the operation of fixed point-to-point transmitters in the 24.05-24.25 GHz band at field strengths of up to 2500 mV/m. Devices operating at these higher levels will be required to use highly directional antennas to minimize the possibility of creating harmful interference to other services in the band. This action will facilitate the introduction of a variety of new, innovative products and services in the band, such as managing the network traffic on a high-speed wireless internet service or connecting a multiple building intra-office network.

DATES: Effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418-2408, TTY (202) 418-2989, e-mail: nmcneil@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket 98-156, FCC 01-357, adopted December 11, 2001 and released December 14, 2001. The full text of this document is available on the Commission's internet site at www.fcc.gov. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this document may be purchased from the Commission's duplication contractor Qualex International, (202) 863-2893 voice, (202) 863-2898 Fax, qualexint@aol.com e-mail, Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554.

Summary of Report and Order

1. In the *NPRM* in this proceeding, the Commission proposed to modify § 15.249 to allow operation of fixed point-to-point devices in the 24.05-24.25 GHz band segment of the 24 GHz spectrum in accordance with the field strength limit and antenna gain requirements requested by Sierra Digital Communications, Inc., 63 FR 50185, September 21, 1998. This *Report and Order* amends § 15.249 to permit the