

(g) * * *

(58) *Enuretic*. Enuretic conditioning programs, but enuretic alarms may be cost-shared when determined to be medically necessary in the treatment of enuresis.

* * * * *

4. Section 199.5 is amended by revising paragraph (a)(4)(iii) and adding paragraph (a)(5)(v) to read as follows:

§ 199.5 Program for Persons with Disabilities (PPPWD).

(a) * * *

(4) * * *

(iii) *Valid period*. An authorization for a PFPWD service or item shall not exceed twelve consecutive months.

* * * * *

(5) * * *

(v) The requirements of this paragraph (a)(5) notwithstanding, no Public Facility Use Certification is required for medical services and items that are provided under Part C of the Individuals with Disabilities Education Act in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the PFPWD.

* * * * *

5. Section 199.8 is amended by adding paragraph (d)(5) to read as follows:

§ 199.8. Double coverage.

* * * * *

(d) * * *

(5) The requirements of paragraph (d)(4) of this section notwithstanding, CHAMPUS is primary payer for services and items that are provided under Part C of the IDEA that are medically or psychologically necessary in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

* * * * *

Dated: April 10, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-9180 Filed 4-16-02; 8:45 am]

BILLING CODE 5001-08-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 63

[CC Docket No. 01-150; FCC 02-78]

Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules to govern and streamline review of applications for section 214 of the Communications Act of 1934, as amended (the Act), to transfer control of domestic transmission lines. Specifically, this document establishes a thirty day streamlined review process that will presumptively apply to domestic section 214 transfer applications meeting specified criteria, and that will apply on a case-by-case basis to all other domestic section 214 applications. This document also sets forth the information that applicants must provide in their domestic section 214 applications, whether filed separately or in combination with an international section 214 applications. Moreover, this document defines pro forma transactions in a manner that is consistent with the definition used by the Commission in other contexts, and harmonizes the treatment of asset acquisitions with the treatment of acquisitions of corporate control.

DATES: Effective May 17, 2002, except §§ 63.01, 63.03 and 63.04 which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: Aaron Goldberger, Attorney-Advisor, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418-1580, or via the Internet at agoldber@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 01-150, FCC 02-78, adopted March 14, 2002, and released March 21, 2002. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating

contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com. It is also available on the Commission's website at <http://www.fcc.gov>.

Synopsis of the Report and Order

1. The Commission's goals in adopting this Report and Order are: (1) To add predictability, efficiency, and transparency to the Commission's domestic section 214 transfer of control review process; and (2) greatly improve the Commission's current domestic section 214 transfer of control procedures, which carriers have sometimes found confusing, cumbersome, and overly burdensome to navigate.

2. *Background.* Under section 214 of the Communications Act of 1934, as amended (Act), carriers must obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating or engaging in transmission over lines of communication, or before discontinuing, reducing or impairing service to a community. In considering such applications, the Commission has employed a public interest standard under section 214(a) that involves an examination of the potential public interest harms and benefits of a proposed transaction.

3. In 1999, the Commission adopted the current version of § 63.01 of the Commission's rule, granting all carriers blanket authority under section 214 to provide domestic interstate services and to construct, acquire, or operate any domestic transmission line. The blanket authority in § 63.01, however, does not extend to the transfer of lines resulting from an acquisition of corporate control. Accordingly, with respect to acquisitions of corporate control, the Commission decided that carriers must file a section 214 application with the Commission and obtain Commission approval prior to consummating a proposed transaction.

4. In the Notice of Proposed Rulemaking adopted in this proceeding on July 12, 2001 (66 FR 41823 (2001)), the Commission tentatively concluded that a substantial number of transactions do not raise public interest concerns and should be granted on a streamlined basis. Therefore, the Commission sought comment on ways to streamline its review process for these transactions. Following from the Notice of Proposed Rulemaking, this Report and Order takes several significant steps to lessen the burden on carriers seeking authorization to acquire domestic transmission lines.

5. *Discussion.* First, the Commission establishes a thirty day streamlined review process in which certain applications are automatically granted thirty days after public notice announcing the transaction unless a carrier is otherwise notified by the Commission. The Streamlining Rule lists categories of applications that would be presumptively accorded streamlined treatment, such as those involving only non-facilities-based carriers; certain types of incumbent local exchange carrier (LEC) transactions; combinations of interexchange carriers with low combined market shares; and proposed transactions where one party provides no domestic telecommunications services. Streamlined processing of applications not falling within a presumptive category will be determined on a case-by-case basis.

6. Second, the Commission adopts rules to provide guidance concerning the information that carriers should provide in domestic section 214 applications. The Commission also eases filing burdens by adopting rules that enable carriers to file a single document with the Commission that combines both domestic and international section 214 applications.

7. Third, the Commission eliminates application filing requirements for all pro forma transactions, requiring simple post-transaction notifications to the Commission only for certain transfers in bankruptcy proceedings. The Commission also defines pro forma transactions in the domestic section 214 context in a manner that is consistent with how the Commission defines pro forma transactions involving other types of Commission authorization.

8. Fourth, the Commission modifies its filing requirements with regard to asset acquisitions, by requiring that they now be treated as transfers of control.

9. Finally, the Report and Order removes sections of the Commission's rules that the Commission has determined to be obsolete.

Final Paperwork Reduction Act Analysis

10. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act. The new paperwork requirement contained in the Report and Order will

go into effect in the **Federal Register** upon OMB approval.

Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act, as amended, (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Declaratory Ruling and Notice of Proposed Rulemaking in CC Docket No. 01-150* (NPRM). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received seven comments and four reply comments in this proceeding. No comments received addressed the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

12. The Commission initiated the NPRM to seek comment on how it might improve and streamline applications under section 214 to acquire domestic transmission lines through acquisitions of corporate control that require little scrutiny in order for the Commission to determine that they serve the public interest. In particular, the Commission sought comment on: (1) Whether the Commission should shorten the review period for a predetermined class of domestic section 214 applications; (2) what criteria to employ to determine eligibility for streamlined review; (3) how to treat a streamlined domestic section 214 application that is accompanied by a request for waiver of Commission rules; (4) whether the Commission should have discretion to remove an application from streamlined processing; (5) how the Common Carrier Bureau should treat a streamlined application when the applicants file related applications in other bureaus; and (6) whether the Commission should, as an alternative to streamlining, relieve all non-dominant carriers, or certain categories of non-dominant carriers, that have blanket domestic section 214 authority from filing transfer of control applications.

13. In this Order, the Commission adopts rules to govern and streamline review of domestic section 214 transfer of control applications. By adopting these rules, the Commission intends to reduce the burden on carriers of complying with the Commission's review requirements and, at the same time, increase the predictability and transparency of these requirements.

14. First, under the new streamlined procedures, for example, transactions involving small entities such as incumbent LECs, are presumed to be of the kind not likely to raise public

interest concerns and would receive automatic approval after a 30 day review period unless otherwise notified by the Commission. This streamlined approach reduces the amount of business and legal resources an applicant may need to expend to manage an application through the Commission review process because applicants can now predict the level of scrutiny an application is likely to receive. The streamlined approach also offers small entities the benefit of business certainty by designating a date certain on which transactions would be permitted to close.

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

15. No party specifically commented in response to the Regulatory Flexibility Act. However, commenters proposed many of the streamlined measures the Commission enacted. For example, in this Order, the Commission adopts commenters' proposals to presumptively streamline transfer applications involving domestic, interstate carriers that are non-dominant in the provision of any service where their combined post-transaction market presence is unlikely to raise public interest concerns. If a transaction proposes to combine the interexchange services of two non-dominant carriers, the application will be presumptively streamlined if the transferee's market share in the interstate, interexchange market following the transaction would be less than 10 percent. Similarly, if a transaction proposes to combine the telephone exchange services and/or exchange access services of two non-dominant carriers, the application will be presumptively streamlined if their services are offered exclusively in geographic areas served by a dominant local exchange carrier. These adopted streamlining measures proposed by commenters, while not directly responsive to the RFA, will nevertheless benefit both small and large carriers.

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

16. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act,

unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, 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 the SBA.

17. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 5,679 interstate service providers. These providers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

18. The Commission has included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

19. *Total Number of Telephone Companies Affected.* The U.S. Bureau of Census (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 contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." It seems reasonable to conclude that fewer than 3,497 telephone service firms are small

entity telephone service firms or small incumbent LECs that may be affected by these rules.

20. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) 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, the Commission is 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 SBA's definition. Therefore, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by these rules.

21. *Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPS), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information that the Commission knows regarding the number of these carriers nationwide appears to be the data that the Commission collects annually in connection with the TRS. According to our most recent data, there are 1,329 LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of these

carriers that would qualify as small business concerns under the SBA's definition. Therefore, the Commission estimates that there are fewer than 1,329 small entity LECs or small incumbent LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 resellers that may be affected by these rules.

22. *Wireless Telephony and Paging and Messaging.* Wireless telephony includes cellular, personal communications services (PCS) or specialized mobile radio (SMR) service providers. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees, or to providers of paging and messaging services. The closest applicable SBA definition is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent Provider Locator data, 858 carriers reported that they were engaged in the provision of wireless telephony and 576 companies reported that they were engaged in the provision of paging and messaging service. The Commission does not have data specifying the number of these carriers that are not independently owned or operated, and thus are unable at this time to estimate with greater precision the number that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 858 small carriers providing wireless telephony services and fewer than 576 small companies providing paging and messaging services that may be affected by these rules.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. The streamlining requirements discussed herein will not require additional reporting, recordkeeping or compliance requirements for service providers. In this Order, the Commission is not mandating new recordkeeping and compliance requirements. Rather, the Commission is articulating more clearly the categories of information that must be contained in a domestic section 214 application for transfer of control in order for the Commission to grant streamlined review. While there has been some uncertainty concerning the appropriate content of a section 214 application, the Commission believes that these new requirements will lessen the regulatory burden on small carriers.

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

24. 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

25. The Commission concludes that measures adopted and described in this Order would reduce regulatory burdens for small carriers including resellers and small incumbent LECs. For example, in this Order, the Commission eases filing burdens by adopting rules that enable carriers to file a single document with the Commission that combines both domestic and international section 214 applications. Aside from cases involving bankruptcy, where a simple notice will be required, the Commission eliminates filing requirements for *pro forma* transactions. The same categories of *pro forma* transactions that apply in other bureaus will apply to domestic carriers, thus improving consistency of filing requirements across bureaus for small and large entities alike. Carriers have sometimes found the filing rules confusing, cumbersome, and overly burdensome to navigate because the rules did not state what information the Commission required. In this Order, the Commission clarifies what a carrier must submit to be eligible for streamlined treatment. Overall, the steps the Commission takes in this item will add predictability, efficiency, and transparency to its review process, and will vastly improve our current transfer of control procedures. While these streamlining measures apply similarly to both small and large entities, the Commission expects that small entities are more likely to benefit to the extent such firms have fewer or reduced resources available, as compared to large firms.

26. In this Order, the Commission also describes commenters' alternative streamlining proposals and state why those proposals would not improve efficiency or predictability, or would not serve the public interest. For example, CenturyTel proposed that "after the fact" notice for corporate

transfers of control by small and medium-sized carriers would serve the public interest. However, the Commission must fulfill its statutorily imposed duty to determine whether the transaction serves the public interest, notwithstanding the legitimate desire of applicants to obtain the most expedited review possible. Therefore, the Commission concludes that applicants shall continue current practice and provide the Commission prior notice of proposed transfers of control to permit a short period for comment and review, even in the context of streamlined processing of domestic section 214 applications. Moreover, the Commission gains assurance from knowing that the rule would continue to benefit small carriers and serve the public interest by providing applicants with a date certain for domestic transfers of control, after which every transaction may close, unless the Commission otherwise notifies the applicant.

27. *Report to Congress.* The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

28. *It is ordered*, pursuant to the authority contained in sections 2, 4(i)-(j), 201, 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)-(j), 201, 214, and 303(r), that the *Report and Order* in CC Docket No. 01-150 is adopted and parts 0, 1, and 63 of the Commission's rules, 47 CFR parts 0, 1, and 63, are amended as set forth.

29. *It is further ordered* that the policies, rules, and requirements adopted herein are adopted and shall become effective upon approval by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

30. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order* in CC Docket No. 01-150, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Reporting and recordkeeping requirements.

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1 and 63 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. In § 0.291 remove paragraph (c) and redesignate paragraphs (d) through (i) as paragraphs (c) through (h).

PART 1—PRACTICE AND PROCEDURE

3. The authority for part 1 continues to read:

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

§ 1.762 [Removed]

4. Remove § 1.762.

§§ 1.765 and 1.766 [Removed]

5. Remove §§ 1.765 and 1.766.

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

6. The authority citation for part 63 continues to read:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403, and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

7. Section 63.01(a) is revised to read as follows:

§ 63.01 Authority for all domestic common carriers.

(a) Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.

8. Add § 63.03 to read as follows:

§ 63.03 Streamlining procedures for domestic transfer of control applications.

Any domestic carrier that seeks to transfer control of lines or authorization to operate pursuant to section 214 of the Communications Act of 1934, as amended, shall be subject to the following procedures:

(a) *Public Notice and Review Period.* Upon determination by the Common Carrier Bureau that the applicants have filed a complete application and that the application is appropriate for streamlined treatment, the Common Carrier Bureau will issue a public notice stating that the application has been accepted for filing as a streamlined application. Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31st day after the date of public notice listing a domestic section 214 transfer of control application as accepted for filing as a streamlined application, but only in accordance with the operations proposed in its application. Comments on streamlined applications may be filed during the first 14 days following public notice, and reply comments may be filed during the first 21 days following public notice, unless the public notice specifies a different pleading cycle. All comments on streamlined applications shall be filed electronically, and shall satisfy such other filing requirements as may be specified in the public notice.

(b) *Presumptive Streamlined Categories.* (1) The streamlined procedures provided in this rule shall be presumed to apply to all transfer of control applications in which:

(i) Both applicants are non-facilities-based carriers;

(ii) The transferee is not a telecommunications provider; or

(iii) The proposed transaction involves only the transfer of the local exchange assets of an incumbent LEC by means other than an acquisition of corporate control.

(2) Where a proposed transaction would result in a transferee having a market share in the interstate, interexchange market of less than 10

percent, and the transferee would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction, the streamlined procedures provided in this rule shall be presumed to apply to transfer of control applications in which:

i. Neither of the applicants is dominant with respect to any service;

ii. The applicants are a dominant carrier and a non-dominant carrier that provides services exclusively outside the geographic area where the dominant carrier is dominant; or

iii. The applicants are incumbent independent local exchange carriers (as defined in § 64.1902 of this chapter) that have, in combination, fewer than two (2) percent of the nation's subscriber lines installed in the aggregate nationwide, and no overlapping or adjacent service areas.

(3) For purposes of (b)(1) and (2) of this paragraph, the terms "applicant," "carrier," "party," and "transferee" (and their plural forms) include any affiliates of such entities within the meaning of section 3(1) of the Communications Act of 1934, as amended.

(c) *Removal of Application from Streamlined Processing.* (1) At any time after an application is filed, the Commission, acting through the Chief of the Wireline Competition Bureau, may notify an applicant that its application is being removed from streamlined processing, or will not be subject to streamlined processing. Examples of appropriate circumstances for such action are:

(i) An application is associated with a non-routine request for waiver of the Commission's rules;

(ii) An application would, on its face, violate a Commission rule or the Communications Act;

(iii) An applicant fails to respond promptly to Commission inquiries;

(iv) Timely-filed comments on the application raise public interest concerns that require further Commission review; or

(v) The Commission, acting through the Chief of the Wireline Competition Bureau, otherwise determines that the application requires further analysis to determine whether a proposed transfer of control would serve the public interest.

(2) Notification will be by public notice that states the reason for removal or non-streamlined treatment, and indicates the expected timeframe for Commission action on the application. Except in extraordinary circumstances, final action on the application should be

expected no later than 180 days from public notice that the application has been accepted for filing.

(d) Pro Forma Transactions. (1) Any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, is authorized to undertake any corporate restructuring, reorganization or liquidation of internal business operations that does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate, including transfers in bankruptcy proceedings to a trustee or to the carrier itself as a debtor-in-possession.¹ Under this rule, a transfer of control of a domestic line or authorization to operate is considered pro forma when, together with all previous internal corporate restructurings, the transaction does not result in a change in the carrier's ultimate ownership or control, or otherwise falls into one of the illustrative categories found in § 63.24 of this part governing transfers of control of international carriers under section 214 of the Communications Act of 1934, as amended.

(2) Any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, must notify the Commission no later than 30 days after control of the carrier is transferred to a trustee under Chapter 7 of the Bankruptcy Code, a debtor-in-possession under Chapter 11 of the Bankruptcy Code, or any other party pursuant to any applicable chapter of the Bankruptcy Code when that transfer does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate. The notification can be in the form of a letter (in duplicate to the Secretary). The letter or other form of notification must also contain the information listed in paragraphs (a)(1) through (a)(4) in § 63.04. A single letter may be filed for more than one such transfer of control. If a carrier files a discontinuance request within 30 days of the transfer in bankruptcy, the Commission will treat the discontinuance request as sufficient to fulfill the pro forma post-transaction notice requirement.

(3) Notwithstanding any other provision in this part, any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, including a carrier that begins

¹ "Control" includes actual working control in whatever manner exercised and is not limited to majority stock ownership. "Control" also includes direct or indirect ownership or control, such as through intervening subsidiaries. See 47 CFR 63.09.

providing service through a differently named subsidiary after an internal corporate restructuring, remains subject to all applicable conditions of service after an internal restructuring, such as rules governing slamming and tariffing.

9. Add § 63.04 to read as follows:

§ 63.04 Filing procedures for domestic transfer of control applications

(a) *Domestic Services Only.* A carrier seeking domestic section 214 authorization for transfer of control should file an application containing:

(1) The name, address and telephone number of each applicant;

(2) The government, state, or territory under the laws of which each corporate or partnership applicant is organized;

(3) The name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed;

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

(5) Certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. 853.

(6) A description of the transaction;

(7) A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area;

(8) A statement as to how the application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment;

(9) Identification of all other Commission applications related to the same transaction;

(10) A statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure;

(11) Identification of any separately filed waiver requests being sought in conjunction with the transaction; and

(12) A statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets.

(b) *Domestic/International Applications for Transfers of Control.*

Where an applicant wishes to file a joint international section 214 transfer of control application and domestic section 214 transfer of control application, the applicant should submit information that satisfies the requirements of § 63.18, which specifies the contents of applications for international authorizations, together with filing fees that satisfy (and are in accordance with filing procedures applicable to) both §§ 1.1105 and 1.1107 of this chapter. In an attachment to the international application, the applicant should submit the information described in paragraphs (a)(6) through (a)(12) of this section.

[FR Doc. 02-9101 Filed 4-16-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-786, MM Docket No. 00-124, RM-9893]

Digital Television Broadcast Service; Bryan, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KWTX/KBTX License Corporation, licensee of station KBTX-TX, Bryan, Texas, substitutes DTV channel 50 for DTV channel 59 at Bryan. *See* 66 FR Rcd 21193 (2001). DTV channel 50 can be allotted to Bryan in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 30-33-16 N. and 96-01-51 W. with a power of 1000, HAAT of 477 meters and with a DTV service population of thousand.

With is action, this proceeding is terminated.

DATES: Effective May 30, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00-124, adopted April 8, 2002, and released April 15, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor,

Qualex International, Portals II, 445 12th Street., SW, CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 59 and adding DTV channel 50 at Bryan.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-785, MM Docket No. 02-3, RM-10349]

Digital Television Broadcast Service; Lakin, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Smoky Hills Public Television, licensee of noncommercial educational station KSWK-T, NTSC channel *3, Lakin, Kansas, substitutes DTV channel *8 for DTV channel *23 at Lakin. *See* 67 FR 4941, February 1, 2002. DTV channel *8 can be allotted to Lakin, Kansas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (37-49-38 N. and 101-06-35 W.) with a power of 100, HAAT of 141 meters and with a DTV service population of 101 thousand. With this action, this proceeding is terminated.

DATES: Effective May 30, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.