

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action, therefore it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

§ 165.T09-999 [Removed]

2. Remove § 165.T09-999.

§ 165.T09-101 [Removed]

3. Remove § 165.T09-101.

§ 165.T09-103 [Removed]

4. Remove § 165.T09-103.

5. Add § 165.911 to read as follows:

§ 165.911 Security Zones; Captain of the Port Buffalo Zone.

(a) *Location.* The following are security zones:

(1) *Nine Mile Point and Fitzpatrick Nuclear Power Plants.* The waters of Lake Ontario bounded by the following area, starting at 43°30.8' N, 076°25.7' W; then north to 43°31.2' N, 076°25.7' W; then east-northeast to 43°31.6' N, 076°24.9' W; then east to 43°31.8' N, 076°23.2' W; then south to 43°31.5' N, 076°23.2' W; and then following the shoreline back to the point of origin (NAD 83).

(2) *Ginna Nuclear Power Plant.* The waters of Lake Ontario bounded by the following area, starting at 43°16.9' N, 077°18.9' W; then north to 43°17.3' N, 077°18.9' W; then east to 43°17.3' N, 077°18.3' W; then south to 43°16.7' N, 077°18.3' W; then following the shoreline back to starting point (NAD 83).

(3) *Moses-Saunders Power Dam.* The waters of the St. Lawrence River bounded by the following area, starting at 45°00.73' N, 074°47.85' W; southeast following the international border to 45°00.25' N, 074°47.56' W; then southwest to 45°00.16' N, 074°47.76' W; then east to the shoreline at 45°00.16' N, 074°47.93' W; then northwest to 45°00.36' N, 074°48.16' W; then northeast back to the starting point (NAD 83).

(4) *Long Sault Spillway Dam.* The waters of the St. Lawrence River bounded by the following area, starting at 44°59.5' N, 074°52.0' W; north to 45°00.0' N, 074°52.0' W; east to 45°00.0' N, 074°51.6' W, then south to 44°59.5' N, 074°51.6' W; then west back to the starting point (NAD 83).

(b) *Regulations.* (1) In accordance with § 165.33, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo.

(2) Persons desiring to transit the area of the Nine Mile Point and Fitzpatrick Nuclear Power Plants or Ginna Nuclear Power Plant security zones must contact the Captain of the Port Buffalo at telephone number (716) 843-9570, or on VHF/FM channel 16 to seek permission to transit the area. Persons desiring to transit the area of the Moses-Saunders Power Dam or Long Sault Spillway Dam security zones must contact the Supervisor, Marine Safety Detachment Massena at telephone number (315) 764-3284, or on VHF/FM channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: May 17, 2002.

S.D. Hardy,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 02-13515 Filed 5-29-02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB DOCKET NO. 02-30; FCC 02-37]

Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission (FCC) is proposing to terminate its Alaska Bush Earth Station Policy. The policy bars telephone carriers from obtaining licenses to install and operate satellite earth stations to provide interexchange service in any rural Alaskan community of less than 1,000 population where such service is already available through a satellite link provided by another carrier. The Bush Policy, which stems from a 1972 decision, is an exception to the FCC's current general policy of allowing facilities-based competition in carriage of interstate, interexchange telephone calls. Last year the Regulatory Commission of Alaska repealed a mirror-image regulation barring facilities-based competition in carriage of intrastate calls to or from Bush communities. The Commission contends that no showing has ever been made that the Bush exception to the

general pro-competition policy is necessary to protect the public interest. The intended effect is to invite public comment on this proposal.

DATES: Comment are due on or before July 1, 2002 and reply comment are due on or before July 15, 2002.

ADDRESSES: Electronic comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via Internet to <http://www.fcc.gov/e-file/ecfs.html>. All other filing must be sent to Office of Secretary, Federal Communications Commission, 445 12th St., SW., Room TW-A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

William Bell at (202) 418-0771. Internet: wbell@fcc.gov, International Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) CC Docket No. 92-297, FCC 01-164, adopted May 22, 2001 and released on May 24, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, SW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th St., 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 Web site at <http://www.fcc.gov>.

Summary of the Notice of Proposed Rulemaking

The Bush Policy is an isolated exception to the Commission's interstate MTS open-entry policy. The Commission adopted the restrictive Bush Policy on the basis of a finding that applications for "duplicative" Bush earth stations were mutually exclusive. The finding was made before the advent of MTS competition, and was based on a regulatory policy designed to prevent monopoly carriers from building unneeded facilities in order to obtain larger disbursements from pooled MTS revenues at the expense of other carriers and ratepayers. We see no reason to continue to prevent non-dominant carriers from investing in facilities at their own expense to compete with a carrier with an established facilities monopoly.

We believe that in the current environment—particularly now that the Alaska Commission has eliminated the

parallel intrastate entry barrier—it is time to remove the remaining barrier against facilities-based interstate MTS competition in Bush Alaska. We expect that facilities-based competition in the provision of interstate MTS in Bush communities will produce public interest benefits of the same kind that the Commission envisioned when it adopted the general open-entry policy for the interstate MTS market, that the Bureau envisioned when granting GCI's waiver request, and that the Alaska Commission envisioned when it repealed §§ 52.355 of the Commission's rules. As the Commission observed in the MTS-WATS Second Report and Order, 47 FR 54944-01, November 30, 1982 moreover, even the mere possibility of facilities-based competition would establish an incentive for Alascom to operate more efficiently. The potential for such competition would also tend to deter Alascom from overcharging for use of its facilities to provide interstate MTS to subscribers in Bush communities or to complete calls to Bush residents from subscribers in other states.

We invite comment from interested members of the public on our proposal to eliminate the Bush Policy. Any commenter advocating retention of the Policy should demonstrate with clear and convincing evidence that allowing installation and operation of Bush earth stations for facilities-based interstate MTS competition would result in impairment of the quality of service, reduction of the availability of service, or increased cost burdens for ratepayers.

I. Conclusion

Accordingly, we propose to abolish the Alaska Bush Policy. This will eliminate a significant regulatory entry barrier to facilities-based competition in provision of interstate MTS service, advancing a deregulatory process begun two decades ago that has proven enormously beneficial to the general public.

II. Procedural Matters

A. Ex Parte Presentations

This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules.

B. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended, ("RFA"), 5 U.S.C. 601, *et seq.* requires preparation of an Initial Regulatory Flexibility Analysis ("IRFA") for comments on proposed

rulemaking proceedings, unless the agency certifies that the proposed rules would not have significant economic impact on "a substantial number" of "small entities." The RFA generally defines "small entity" as having the same meaning as the term "small business concern" under the Small Business Act—i.e., a business firm that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Such analysis or certifications need only address the impact on small businesses that would be directly regulated under the proposed rules.

In this Notice of Proposed Rulemaking, the Commission proposes to repeal a regulatory policy that prevents companies from obtaining licenses to operate earth stations in rural Alaska that would carry telephone calls between users in certain Alaskan communities and users in other states if such service is already available in those communities via facilities provided by an established carrier. Because this proposed policy change would not impose any regulatory burden, we certify that it would not have a significant direct impact on a substantial number of small businesses. Anyone who believes that the proposal discussed in this NPRM requires additional RFA analysis may raise that contention in comments filed pursuant to the procedure specified in the next paragraph, labeling the discussion on point as "RFA Comments." The Commission will send a copy of this Notice of Proposed Rulemaking, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy will also be published in the **Federal Register**. See 5 U.S.C. 605(b).

C. Deadlines and Instructions for Filing Comments

Members of the public may file comments on the Further Notice of Proposed Rulemaking. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 1, 2002, and reply comments are due on or before July 15, 2002. Comments may be filed using the Commission's electronic comment Filing System (ECFS) or be filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of

an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electric copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "et form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the filing. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capital Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested persons must file an original and four copies of all comments, reply comments, and supporting comments. Those who want each Commissioner to receive a personal copy of their comments should file an original plus nine copies. Comments and reply comments should be sent to the Office

of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Persons not filing via ECFS are encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Interested persons may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, send an e-mail to ecfs@fcc.gov, including the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

Those filing paper comments must submit an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, and Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. Comments are also available on the ECFS, at https://gullfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts.

III. Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(f), 303(g), and 303(r), GCI's Petition for Rulemaking filed on January 10, 1990 *is granted* and this *Notice of Proposed Rulemaking is adopted*.

It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking* to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-A151

Endangered and Threatened Wildlife and Plants; Listing of the Flat-Tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reinstated proposed rule; reopening of comment period and announcement of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposed listing of the flat-tailed horned lizard (*Phrynosoma mcallii*) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). The reopened comment period will allow all interested parties to submit written comments on the proposal. Comments previously submitted need not be resubmitted as they have been incorporated into the public record and will be fully considered in the final determination. Additionally, we are announcing that public hearings will be held on the proposed listing determination. Because of budgetary constraints, we are only able to hold public hearings on June 19, 2002, as described below. We welcome all substantive comments and want to stress that written comments on the proposal are given equal consideration as verbal comments presented at the public hearings.

DATES: The original public comment period on the proposed listing determination closed on June 9, 1997, and the second comment period on the reinstated proposed listing determination closed on April 25, 2002. The public comment period is reopened, and we will accept comments until July 29, 2002. Comments must be received by 5:00 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this action. The public hearings will be held on June 19, 2002, from 1:00 p.m. to 3:00 p.m. and from 6:00 p.m. to 8:00 p.m. in El Centro, California.

ADDRESSES: *Public Hearings:* The public hearings will be held at Southwest High School Performing Arts Theatre, 2001 Ocotillo Drive, El Centro, CA.

Comments: If you wish to comment on the reinstated proposed rule or provide additional information concerning the status and distribution of