

67249, November 6, 2000), do not apply to this proposed rule.

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 5, 2002.

**Charles M. Auer,**

Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

**§§ 721.1710, 721.4200, 721.4240, and 721.4466 [Removed]**

2. By removing §§ 721.1710, 721.4200, 721.4240, and 721.4466.

[FR Doc. 02-23749 Filed 9-19-02; 8:45 am]

**BILLING CODE 6560-50-S**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 64

[CC Docket Nos. 96-115, 96-149, FCC 02-214]

#### Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; 2000 Biennial Regulatory Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks to refresh the record on two issues raised in the *CPNI Order Further NPRM* (63 FR 45140, August 24, 1998) and requests comment on customer proprietary network information (CPNI) implications when a carrier goes out of business, sells all or part of its customer base, or seeks bankruptcy protection.

**DATES:** Comments are due October 21, 2002, and Reply Comments are due November 19, 2002.

**FOR FURTHER INFORMATION CONTACT:** Marcy Greene, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1580, or via the Internet at [mgreene@fcc.gov](mailto:mgreene@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Further Notice of Proposed Rulemaking (Third Further NPRM) in CC Docket Nos. 96-115, 96-149 and 00-257, adopted July 16, 2002, and released July 25, 2002. The complete text of this Third Further NPRM 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-A257, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com). It is also available on the Commission's Web site at <http://www.fcc.gov>.

#### Synopsis of Third Further NPRM

1. The *Third Further Notice of Proposed Rulemaking* (Third Further NPRM) seeks to refresh the record on regulation of foreign storage of and access to domestic CPNI, and the need for additional enforcement mechanisms or protections for carrier proprietary information. Finally, the *Third Further NPRM* seeks comment on the implications of the Commission's CPNI regulations when carriers leave the market.

#### Initial Regulatory Flexibility Act Analysis

2. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Further Notice of Proposed Rulemaking* (Third Further NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Third Further NPRM* provided herein. The Commission will send a copy of the *Third Further NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Third Further NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### Need for, and Objectives of, the Proposed Rules

3. The Commission is issuing the *Third Further NPRM* to refresh the record on two issues raised in the *CPNI Order Further NPRM*, and to seek comment on the CPNI implications when a carrier goes out of business, sells all or part of its customer base, or seeks bankruptcy protection. Specifically, the *Third Further NPRM* seeks comment on: (1) Foreign storage of and access to domestic CPNI; (2) CPNI safeguards and enforcement mechanisms; and (3) appropriate regulations governing the CPNI held by carriers that go out of business, sell all or part of their

customer base, or seek bankruptcy protection.

4. In a July 8, 1997 *Ex Parte* letter, the FBI requested that the Commission regulate the foreign storage of and foreign-based access to CPNI of U.S. customers who use domestic telecommunications services. The Commission requested comment on this proposal in its *CPNI Order Further NPRM*. As an alternative, the FBI suggested that foreign storage or access to domestic CPNI be permitted only upon informed written customer approval. To the degree that CPNI is stored in a foreign country, the FBI asked that the Commission require carriers to keep a copy of customers' CPNI records within the U.S. for public safety, law enforcement, and national security reasons. The FBI also requested that we require carriers to maintain copies of the CPNI of all U.S.-based customers because of the need for prompt and secure law enforcement purposes. The Commission now requests that commenters refresh the record on this topic. Specifically, it requests that commenters consider the FBI proposal in light of heightened national security concerns. In addition, the Commission requests input as to whether any of the concerns raised by the FBI have been illustrated by actual incidents during the period since comments were received on this topic. Finally, it asks commenters to provide estimates of the costs that would be incurred if we were to mandate carriers to maintain the domestic storage of, and access to, domestic CPNI.

5. In the *CPNI Order Further NPRM*, the Commission sought comment on what safeguards in addition to those adopted in the *CPNI Order* (63 FR 20326, April 24, 1998), if any, are needed to protect the confidentiality of carrier proprietary information, including that of resellers and ISPs. The *CPNI Order Further NPRM* also sought comment on what, if any, further enforcement mechanisms the Commission should adopt to ensure carrier compliance with our CPNI policies and rules. The Commission seeks to refresh the record on this topic. Specifically, it requests that carriers and other interested parties describe any actual experience with problems since we originally issued the *CPNI Order Further NPRM*.

6. Finally, in light of inquiries the Commission has received in the face of recent carrier bankruptcies, mergers, and asset sales, the Commission seeks comment on carrier use and disclosure of CPNI when it sells its assets or goes out of business. It seeks comment on whether an exiting carrier should be

able to use CPNI for transition of its customers to another carrier. If commenters believe that an exiting carrier should be able to disclose CPNI to the acquiring carrier, we seek comment on whether we should require the exiting carrier to state that fact in advance notice provided to customers acquired by the sale or transfer from another carrier in compliance with our authorization and verification (slamming) rules. Further, the Commission asks, to the degree that the exiting carrier has obtained CPNI approvals from its customer, whether the new carrier should be deemed to have received such approvals, or whether it should be required to provide notice and obtain approval for CPNI use and disclosure from the acquired customers. Further, it seeks comment on whether the Commission should recognize a difference between service types. The Commission also seeks comment on whether carriers can sell CPNI as an asset and on whether such regulations would go beyond the scope of section 222 or the Commission's authority.

#### Legal Basis

7. The *Third Further NPRM* is adopted pursuant to sections 1, 4(i), 222, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222, and 303(r).

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

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally 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 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 Small Business Administration (SBA).

9. 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.

10. 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. It has therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

11. *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 that may be affected by these rules.

12. *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, 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 SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities that may be affected by these rules.

13. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, there are 1,329 local exchange carriers, including incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,329 small entity LECs that may be affected by the proposals in the *Second Further Notice* (66 FR 50140, October 2, 2001).

14. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 229 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to

estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 229 small entity IXCs that may be affected by this order.

15. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 532 companies reported that they were engaged in the provision of either competitive access services or competitive local exchange service. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 532 small entity CAPs that may be affected by this order.

16. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 22 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 22 small entity operator service providers that may be affected by this order.

17. *Pay Telephone Providers.* Neither the Commission nor the SBA has developed a definition of small entities

specifically applicable to pay telephone providers. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 936 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 936 small entity pay telephone operators that may be affected by this order.

18. *Wireless Carriers.* Wireless telephony includes cellular, personal communications services (PCS) or specialized mobile radio (SMR) service providers. The SBA has developed a definition of small entities for radiotelephone (wireless) companies; however, 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. Though categorized under the same size standard as the other wireless services discussed in this paragraph, paging is now considered a separate industry. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. 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 services. 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 radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate 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.

19. *Resellers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under the SBA's rules is for all telephone communications companies. The most reliable source of information regarding the number of toll resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 710 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 710 small entity resellers that may be affected by this order.

#### Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

20. The Commission has discussed generally in the *Third Further NPRM*, *supra* paras. 143–147, the possibility that its tentative policies and rules, if adopted, might entail additional obligations for carriers. The Commission asks for comment on any reporting, record keeping, or compliance requirements that might arise that could impact any entities, large and small, affected by such requirements.

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

21. 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.

22. Section 222 applies to all telecommunications carriers, and therefore, any rules that we adopt will be applicable to all carriers. Accordingly, the Commission cannot exempt small entities from complying

with any rules that we adopt. It has, however, taken the limited resources of small entities into account in promulgating certain existing CPNI rules, and intend to do so again in addressing the issues that are addressed in the *Third Further NPRM*. In response to the IRFA issued in connection with the *Clarification Order* and *Second Further Notice of Proposed Rulemaking* (66 FR 53545, October 23, 2001 and 66 FR 50140, October 2, 2001), the Commission notes that some commenters asserted that, because the statute requires a universal standard, it had not adequately taken notice of the issues of small entities in this area. That is untrue; it is of particular concern to the Commission that the interests of small entities be addressed.

23. In this *Third Further NPRM*, the Commission seeks comment on whether it should regulate the foreign storage or foreign-based access to the CPNI of U.S. customers who use domestic telecommunications services. Specifically, it seeks comment on whether foreign storage or foreign access to domestic CPNI should be permitted only upon informed customer approval. The Commission also requests comment upon whether it should require that copies of domestic CPNI should be maintained within the United States. If it adopts rules governing foreign storage of and access to CPNI, all telecommunications carriers, including small entities, must comply with such rules. While additional rules could place a burden upon small entities in terms of developing, tracking and maintaining customer consent or in terms of creating copies of customer CPNI, such actions would only be required to the extent carriers choose to store domestic CPNI outside of the United States. Carriers could decide whether the burdens of any such regulations outweigh the benefit to the carrier of foreign storage of or access to domestic CPNI.

24. The Commission also seeks to refresh the record on what, if any, additional safeguards may be needed to protect the confidentiality of carrier proprietary information, as well as what further enforcement mechanisms, if any, may be necessary. In addition, it seeks comment on the use and disclosure of CPNI in the event a carrier goes out of business or sells its assets. Because the Commission has not proposed any rules at this time, it is unable to forecast the economic impact on small entities. Overall, comments are requested in response to this IRFA on what competitive or economic impact any proposed rules in these areas would have on small entities and on whether

there is any alternative form or proposals that we should consider to minimize the economic impact on them. Further, while the Commission does not anticipate that any adopted rules will have a different impact upon small entities, it seeks comment in particular from small entities that have concerns about the effect the proposed policies or rules, if adopted, might have on them if they later go out of business or sell their assets.

#### Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

#### Ordering Clauses

25. Accordingly, pursuant to the authority contained in sections 2, 4(i)–4(j), 201, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–4(j), 201, 303(r), this *Third Further Notice of Proposed Rulemaking is adopted*.

26. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Third Further NPRM*, including the Initial Regulatory Flexibility Analysis, 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–AI27

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Carbonate Plants From the San Bernardino Mountains in Southern California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for five carbonate plants from the San Bernardino Mountains in Southern California: *Astragalus albens* (Cushenbury milk-vetch), *Erigeron parishii* (Parish's daisy), *Eriogonum*