

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: June 17, 2003.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

[FR Doc. 03-18300 Filed 7-18-03; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 52

[CC Dockets 99-200, 96-98 and 95-116; FCC 03-126]

#### Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission invites comment on whether to extend the thousands-block number pooling exemption established herein to carriers operating in rate centers with two service providers. In light of the Commission's prior finding that pooling provides the greatest benefit when participation is maximized, commenters that support extending the exemption should provide specific information on the number of carriers that would be affected by such an extension, so the Commission can determine how pooling deployment will be affected. Commenters advocating an extension of the current exemption should provide specific, per carrier, pooling cost information to enable the Commission to properly balance the benefits of pooling against the costs to carriers and their customers.

**DATES:** Comments are due on or before August 20, 2003. Reply comments are due on or before September 4, 2003.

**ADDRESSES:** 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. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Pam Slipakoff, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7705.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Fourth Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 99-200 released on June 18, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

#### I. Further Notice of Proposed Rulemaking

1. In its comments, AT&T Wireless proposes that carriers, regardless of their size, operating in rate centers with fewer than three service providers, be exempt from the pooling requirement. AT&T also suggests that if a state commission believes that significant number optimization benefits could be obtained in rate centers with only two carriers, the state commission could petition the Commission to require those carriers to participate in pooling. In the accompanying Fourth Report and Order, the Commission exempts carriers from the pooling requirement if they are the only carrier in a rate center receiving numbering resources, but there is insufficient evidence in the record to determine whether rate centers with two competing service providers should also be exempt from pooling, as AT&T suggests.

2. The Commission therefore seeks comment on whether to extend the exemption established in the accompanying Fourth Report and Order to carriers operating in rate centers with two service providers. In light of the Commission's prior finding that pooling provides the greatest benefit when participation is maximized, commenters that support extending the exemption should provide specific information on the number of carriers that would be affected by such an extension, so the Commission can determine how pooling deployment will be affected. Commenters advocating an extension of the current exemption should provide specific, per carrier, pooling cost information to enable the Commission to properly balance the benefits of pooling against the costs to carriers and their customers.

#### II. Procedural Matters

##### A. Initial Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act of 1980, as amended (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 Fourth Report and Order in CC Docket No. 99-200, Fourth Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 99-200, and Fourth Report and Order in CC Docket No. 95-116. 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 FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, this FNPRM (or a summary) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

4. The Commission is issuing this FNPRM to seek comment on a proposal to exempt carriers, regardless of size, from the Commission's pooling requirement if they are in rate centers with only two service providers. We also ask commenters that support extending the exemption to provide specific information on the number of carriers that would be affected by such an extension, so the Commission can determine how pooling deployment will be affected. Commenters advocating an extension of the current exemption should provide specific, per carrier, pooling cost information to enable the Commission to properly balance the benefits of pooling against the costs to carriers and their customers. Thus, we request a cost-benefit analysis showing how the benefits of pooling can be achieved without undue burden on carriers. In doing so, we seek to ensure that the limited numbering resources of the NANP are used efficiently.

##### 2. Legal Basis

5. The authority for actions proposed in this FNPRM may be found in sections 1, 3, 4, 201-205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201-205, and 251.

##### 3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

6. 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 proposed 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.

7. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes bi-annually in its Trends in Telephone Service Report. According to data in the most recent report, there are 5,679 interstate carriers. These carriers 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.

8. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted previously, 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. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. Local Exchange Carriers and Competitive Access Providers. Neither the Commission nor the SBA has developed a definition specifically for small providers of local exchange services. The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data there are 1,619 local services providers with 1,500 or fewer employees. Because 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 these carriers that would qualify as small business concerns under SBA's definition. Of the 1,619 local service providers, 1,024 are incumbent local exchange carriers, 411 are Competitive Access Providers (CAPs) and competitive LECs, 131 are resellers and 53 are other local exchange carriers. Consequently, we estimate that fewer than 1,619 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected.

10. Cellular and Wireless Telephony. Neither the Commission nor the SBA has developed a definition of small entities specifically for wireless telephony. The closest definition is the SBA definition for cellular and other wireless telecommunications. Under this definition, a cellular licensee is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data, 580 providers classified themselves as providers of wireless telephony, including cellular telecommunications, Personal Communications Service, and Specialized Mobile Radio (SMR) Telephony Carriers. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 580 wireless telephony carriers that may be affected.

11. Other Wireless Services. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to wireless services other than wireless telephony. The closest applicable definition under the SBA rules is again that of cellular and other wireless telecommunications, under which a service provider is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data, 595 providers classified themselves as paging services, wireless data carriers or other mobile service providers. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 595 wireless service providers that may be affected.

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

12. No new recording, recordkeeping or other compliance requirements are proposed. The proposal, if adopted, would create an exemption from regulation for carriers operating in areas where there are only two competing service providers.

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

13. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities."

14. The Commission's action in this FNPRM will benefit certain small entities by exempting them from the pooling requirement under certain circumstances. Specifically, we seek comment on whether carriers, regardless of size, in rate centers with only two service providers should be exempted from thousands-block number pooling. Thus, we seek to further minimize the burden on small carriers.

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

15. None.

#### B. Comment Filing Procedures

16. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before August 20, 2003 and reply comments on or before September 4, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

17. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the

comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, 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, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <get form <your e-mail address>." A sample form and directions will be sent in reply. After filing your comments electronically, please notify Sheryl Todd at [stodd@fcc.gov](mailto:stodd@fcc.gov) that comments have been filed.

18. 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 appears 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 mail (although we continue to experience delays in receiving U.S. Postal Service mail). The 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 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

19. In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; e-mail: [qualexint@aol.com](mailto:qualexint@aol.com); facsimile: (202) 863-2898; phone: (202) 863-2893.

20. Comments in this proceeding will be available on ECFS. They will also be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. They 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](mailto:qualexint@aol.com). Documents may also be purchased from the Commission's duplicating contractor. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418-7426 (voice) or (202) 418-7365 (TTY), or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This Public Notice can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cib/dro>.

### III. Ordering Clauses

21. Pursuant to the authority contained in sections 1, 3, 4, 201-205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201-205, and 251, this Fourth Report and Order is hereby adopted and part 52 of the Commission's rules are amended and adopted as set forth in the Final rule document (Published elsewhere in this issue).

22. Pursuant to the authority contained in sections 1, 2, 3, 4, 251(e), 254(e), and 405 of the Communications Act of 1934, as amended, 47 U.S.C 151, 152, 153, 154, 251(e), 254(e), and 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the petition for reconsideration filed by AT&T on May 6, 2002 is denied.

23. It is further ordered that, pursuant to the authority contained in Sections 1, 3, 4, 201-205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201-205, and 251, this FNPRM of proposed rulemaking is hereby adopted.

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116, and Further Notice of Proposed Rulemaking in CC Docket No. 99-200, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration.

### List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[I.D. 071003A]

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

**AGENCY:** Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP) and the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (Highly Migratory Species (HMS) FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the East Coast Tuna Association (ECTA) that would allow five purse seine vessels to fish for giant Atlantic bluefin tuna (*Thunnus thynnus*) in NE multispecies year-round Closed Area I, where use of purse seine gear is currently prohibited. The EFP would exempt these vessels from the gear restrictions for the Georges Bank Regulated Mesh Area. The purpose of the study is to collect information regarding bycatch of, and interactions of purse seine gear with, groundfish species, other species, and marine mammals, and to record contact with the ocean bottom or with any Essential Fish Habitat (EFH). The results of this EFP would allow NMFS and the New England Fishery Management Council (Council) to evaluate the feasibility of allowing purse seine gear in Closed Area I as an exempted gear on a permanent basis. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the