

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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

Regulation

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. 1226, 1231; 46 U.S.C. 701, 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5. Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.514 amend paragraph (b) by adding the paragraph heading "*Regulations.*" immediately before the word "Notwithstanding"; amend paragraph (c) by adding the paragraph heading "*General information.*" immediately before "(1) The COTP Wilmington"; amend paragraph (c)(1) by adding the paragraph heading "*Announcements.*" immediately before the words "The COTP Wilmington", revise paragraphs (c)(2) and (d), and add paragraph (c)(3) to read as follows:

§ 165.514 Safety Zone: Atlantic Intracoastal Waterway, vicinity of Marine Corps Base Camp Lejeune, North Carolina.

* * * * *

(b) *Regulations.* * * *

(c) *General information.* (1) *Announcements.* * * *

(2) *Camp Lejeune artillery operations.* Artillery weapons firing over the AICW from Marine Corps Base Camp Lejeune will be suspended and vessels permitted to transit the specified 2-nautical-mile firing area for a 1-hour period beginning at the start of each odd-numbered hour local time (e.g., 9 a.m., 1 p.m.) A vessel may not enter the specified firing area unless it will be able to complete its transit of the firing area before firing exercises are scheduled to re-start.

(3) *Atlantic Ocean Naval Gunnery live fire operations.* Naval gunnery live fire operations over the AICW from off shore on the Atlantic Ocean may be conducted for periods not to exceed 4 hours, then suspended and vessels permitted to transit the specified two-mile firing area for a minimum of one hour before firing may resume. A vessel may not enter the specified firing area unless it will be able to complete its transit of the firing area before firing exercises are scheduled to re-start.

(d) *Contact information.* U.S. Navy safety vessels may be contacted on VHF

marine band radio channels 13 (156.65 MHz) and 16 (156.8 MHz). The Captain of the Port may be contacted at the Marine Safety Office Wilmington, NC by telephone at 1–(877) 229–0770 or (910) 770–2200.

Dated: March 3, 2004.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 04–6036 Filed 3–17–04; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 51, 52, 53, 54, 63, 64 and 69

[WC Docket No. 02–313; FCC 03–337]

Biennial Regulatory Review of Regulations Administered

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether certain rules should be repealed or modified because they are no longer necessary in the public interest. We intend to consider the comments received pursuant to this *Notice of Proposed Rulemaking* and issue one or more orders to repeal or modify the applicable rules, as appropriate.

DATES: Comments are due on or before April 19, 2004. Reply comments are due on or before May 3, 2004. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 19, 2004.

ADDRESSES: 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. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to Kim A. Johnson@omb.eop.gov or by fax to (202) 395–5167. Parties should also send three paper copies of their filings to

Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Legal Counsel, Wireline Competition Bureau, (202) 418-2332, TTY (202) 418-0484. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at (202) 418-0214, or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM) in WC Docket No. 02-313, FCC 03-337, released on January 12, 2004. 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. Introduction

1. Section 11 of the Communications Act of 1934, as amended (the Act) directs the Commission to review biennially its regulations that apply to the operations or activities of telecommunications service providers; and determine whether those regulations are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." The Commission must then modify or repeal any such regulations that are no longer necessary in the public interest. Consistent with these obligations, we adopted a Report in 2002 addressing certain legal and administrative matters relating to the biennial regulatory review process.

2. Concurrent with the release of the *2002 Report*, March 14, 2003 we released the *2002 Biennial Regulatory Review Staff Reports*, prepared by several of the Commission's operating Bureaus and the Office of Engineering and Technology. In each *Staff Report*, the Bureau or Office summarized its review of the rules under its purview to determine whether to recommend that the Commission modify or repeal such rules. We indicated in the *2002 Report* that the Commission would, based on these *Staff Reports*, issue notices of proposed rulemaking to repeal or modify regulations that may no longer be in the public interest. By this *NPRM*, we initiate one such proceeding for certain rules reviewed by the Wireline

Competition Bureau (WCB or the Bureau).

II. Discussion

A. Part 1—Practice and Procedure

3. *Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers.* Part 1 of the Commission's rules prescribes general rules of practice and procedure for the Commission to follow in carrying out its responsibilities. Section 1.815 requires common carriers with 16 or more full-time employees to file an annual employment report with the Commission (FCC Form 395). This report provides statistical information on the racial, ethnic, and gender makeup of a carrier's work force in nine specific job categories. The rule was adopted to enable the Commission to monitor industry trends in minority and female employment and to raise appropriate questions regarding these patterns. Because federal and state equal employment opportunity (EEO) agencies collect identical or similar information, commenters stated that § 1.815 imposes a needless paperwork burden on the carriers.

4. Additionally, since 1994, licensees have been able to use FCC Form 395 to file annual reports of employment-related discrimination complaints. These reports must be filed by *all* licensees, regardless of the number of employees, pursuant to §§ 21.307(d), 22.321(c), and 23.55(d) of the Commission's rules. Pursuant to these requirements, any complaint filed against a carrier involving EEO violations of any federal, state, territorial, or local laws must be reported to this Commission. Such reports were intended to serve as a means by which the Commission could monitor and investigate carrier practices "indicating a general pattern of disregard of equal employment practices."

5. We seek comment on whether the Commission should continue to require carriers to file annually FCC Form 395 and the report of employment-related discrimination complaints. Specifically, we seek comment on whether this collection is necessary to identify or address issues relating to unlawful discrimination by common carriers, given the availability of similar information from other sources. For example, §§ 21.307, 22.321, and 23.55 of the Commission's rules provide mechanisms by which complaints alleging unlawful discrimination may be filed against carriers, and the Commission investigates these complaints or refers them to the EEOC

where appropriate. We also seek comment on whether Commission action to modify or eliminate form 395 is appropriate given the efforts of the Advisory Committee on Diversity for Communications in the Digital Age. Specifically, we seek comment on whether this information is useful to the Advisory Committee. We also seek comment on whether continued monitoring of common carrier employment practices by the Commission pursuant to § 1.815 and utilizing FCC Form 395 is necessary in the public interest, or whether other available sources provide sufficient information for parties to rely on in filing EEOC complaints.

III. Part 36—Jurisdictional Separation Procedures

6. The part 36 rules are designed to recognize the dual state-federal system of telecommunications regulation, with interstate communications regulated at the federal level. They contain procedures and standards for dividing telephone company investment, revenues, expenses, taxes, and reserves between the state and the federal jurisdictions. The division of costs between the state and federal jurisdictions is necessary for the calculation of state and federal earned rates of return. In addition to allocating costs between the federal and state jurisdictions, part 36 also serves a universal service function by permitting carriers that serve high-cost areas to allocate additional local loop costs to the interstate jurisdiction and to recover those costs through the high-cost universal service support mechanism, thus making intrastate telephone service in high-cost areas more affordable. As described below, we seek comment on the Bureau's recommendations to modify or repeal certain outdated and expired provisions in part 36, and propose modification or repeal of other provisions that may no longer be necessary in the public interest.

7. *Subpart A—General.* We seek comment on certain proposed modifications to this subpart to conform with current rules and policies. First, we propose modifying paragraph (ii) of § 36.2(b)(3), which sets forth the method for apportioning telecommunications plant used jointly for state and interstate operations, to indicate that "holding time minutes" is the basis for measuring the use of both local and toll switching plant, and to correct the erroneous removal of the provision for local switching investment from this section. We also propose modifying § 36.2(b)(3)(iv) to reflect the change from the subscriber plant factor (SPF) to the

25 percent Gross Allocator for exchange plant, to conform with our current rules and policies. We seek comment on these proposals.

8. *Subpart B—Telecommunications Property.* We propose modifying § 36.125(f) to specify how the weighting factors should be applied in apportioning certain investment for study areas with fewer than 50,000 access lines. Additionally, several sections in this subpart contain references to dates that have passed or provisions that have expired by their own terms. For example, §§ 36.154(d) through (f) regarding interstate allocation of certain costs for the years 1988 through 1992 have expired, and thus appear to be no longer applicable. We therefore propose to repeal these sections, as well as references to §§ 36.154(d) through (f) found in § 36.154(c). We seek comment on these proposals.

9. *Subpart F—Universal Service Fund.* The Bureau has recommended repeal of certain provisions in this subpart that have expired by their own terms. They include §§ 36.631(a) and (b), which set forth regulations for calculating interstate expense adjustment until December 31, 1997, and § 36.641, addressing transitional expense adjustment, which is no longer applicable. We believe that these provisions are no longer necessary because they have expired by their own terms, and thus propose to repeal them. Finally, we propose to modify § 36.631(d) to specify that this provision applies only to non-rural telephone companies serving study areas reporting more than 200,000 working loops. We seek comment on these proposals.

10. *Miscellaneous Provisions.* In addition, we seek comment on whether to remove all references to Teletypewriter Exchange Service (TWX) from part 36 of our rules. No carrier has reported data on TWX since the Automated Reporting Management Information System (ARMIS) database was established in 1988, and references to TWX were removed from the ARMIS 43–04 report in 1999. We seek comment on whether to retain the references in part 36 to TWX service because carriers are still offering the service. Otherwise, we propose to delete all references to TWX service from part 36 of our rules, and seek comment on this proposal.

11. Finally, we seek comment on whether, given that activities related to the provision of payphone service have been deregulated, certain provisions in part 36 relating to payphone service should be eliminated. Specifically, we propose deleting the last sentence both

in § 36.142(a) and § 36.377(a)(7), and seek comment on this proposal.

IV. Part 42—Preservation of Records of Communications Common Carriers

12. Part 42 of the Commission's rules sets forth rules governing the preservation of records of communications common carriers, including all accounts, records, memoranda, documents, papers and correspondence prepared by or on behalf of such carriers. Part 42 was established to ensure the availability of carrier records needed by the Commission to meet its regulatory obligations. In addition, part 42 serves the public interest by giving consumers access to information about the rates, terms, and conditions for interstate interexchange services.

13. In the *2002 WCB Staff Report*, December 31, 2002, the Bureau recommended that the Commission initiate a proceeding to examine whether the part 42 rules should be modified or repealed, based on its finding that it is unclear whether there are reasonable and less costly alternatives that would ensure that accurate carrier records are maintained. WCB specifically excluded §§ 42.10 and 42.11 from the recommendation, however, citing to support in the comments for retaining these sections, and indicating that the Commission recently addressed them in a rulemaking. These sections prescribe the public disclosure and information maintenance requirements with which non-dominant interexchange carriers must comply, which include making available to the public information on the rates, terms, and conditions of their international and interstate interexchange services. We agree with the Bureau that consumers should continue to have available to them this information about carriers' rates, terms, and conditions, and therefore will not revisit whether the §§ 42.10 and 42.11 remain necessary in the public interest at this time.

14. Because we also agree with the Bureau that the remaining rules in part 42 merit a review to determine whether there are reasonable and less costly alternatives for maintaining carrier records, we seek comment on the continuing usefulness of §§ 42.1 through 42.9 in their current form. Specifically, we seek proposals on less costly and more efficient ways to collect, preserve, and maintain carrier records and reports. Parties recommending that we change these procedures should specifically address the likely effect on the ability of the Commission, consumers, and other parties (such as

those responsible for law enforcement) to access this important information. We make no specific proposal to modify or repeal these rules at this time, but will determine whether further rulemaking activity is warranted based on the comments received.

V. Part 51—Interconnection

15. Part 51 of the Commission's rules implements §§ 251 and 252 of the Act. Most significantly, these provisions require that incumbent local exchange carriers (LECs) open their networks to competition, and thus, these provisions are critical to fostering local exchange and exchange access competition as envisioned by Congress. Section 251 establishes pro-competitive requirements for telecommunications carriers, LECs, and incumbent LECs; and provides that all telecommunications carriers have a duty to interconnect with other telecommunications carriers. Section 252 establishes procedures for negotiating, arbitrating, and approving interconnection agreements, and provides for pricing standards, including pricing of services offered for resale. We seek comment on certain provisions in this subpart that, for various reasons, may no longer be necessary in the public interest.

16. *Subpart C—Obligations of All Local Exchange Carriers.* Section 51.211 provides the toll dialing parity implementation schedule for LECs and Bell Operating Companies (BOCs). The section contains a number of expired deadlines by which LECs and BOCs were required to implement toll dialing parity and/or notify the Commission of their failure to do so, none of which appear to have any remaining relevance. We therefore propose to repeal §§ 51.211(a) through (e), and seek comment on this proposal. We also seek comment on whether paragraph (f), which defines the term "in-region, interLATA toll service" as it is used in §§ 51.211 and 51.213, should be retained if we repeal paragraphs (a) through (e).

17. Section 51.213(c) also contains a number of expired deadlines, none of which appear to have any remaining relevance. Accordingly, we propose to repeal paragraph (c). We also propose to repeal paragraph (d), given that this paragraph only provides procedural rules for handling implementation plans filed pursuant to paragraph (c), and seek comment on these proposals.

18. *Subpart D—Additional Obligations of Incumbent Local Exchange Carriers.* Sections 51.325 through 51.335 comprise the Commission's network change

disclosure rules. These rules require incumbent LECs to “provide reasonable public notice of changes in the information necessary for the transmission and routing of services using local exchange carriers’ facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks.” The Commission found that these rules were necessary to ensure that competitors receive prompt and accurate notice of changes that could affect their ability to interconnect with the incumbent’s network. The Bureau suggested in the *2002 WCB Staff Report*, however, that the procedures for disclosing network changes may have become unnecessarily complicated in light of carriers’ ability to provide notice of changes and other information via the Internet. Since the issuance of the *2002 WCB Staff Report*, the Commission amended these rules in the *Triennial Review Order*, 68 FR 52276 (September 2, 2003), as part of its fiber-to-the-home (FTTH) unbundling analysis, relying on the Commission’s role in the public notice disclosure process as a critical means of notifying competitors of incumbent LECs’ plans to replace copper loops or copper subloops with fiber. That decision recognized the importance of public disclosure of planned copper loop retirement and sought to ensure that competitive LECs maintain access to loop facilities where necessary, and modified the rules accordingly.

19. Although the Commission recently strengthened the network disclosure rules in certain respects as described above, we nevertheless believe that the Commission should streamline one aspect of these rules. Specifically, we propose deleting § 51.329(c)(3) of the Commission’s rules that requires that paper and diskette copies of the incumbent LEC’s public notice or certification be sent to the Chief of the Bureau. We find that this requirement is no longer necessary to the public interest. Due to the other public filing and notification provisions of this section and the continual review by Commission staff of these filings, direct service of a copy of these submissions upon the Chief of the Bureau represents an unnecessary expenditure of resources. However, we do not extend this tentative conclusion to remove all obligations to notify the Commission, as some commenters have suggested. In light of the importance we placed in the *Triennial Review Order* on the modifications to our network disclosure rules, we do not believe that Internet posting is a sufficient method of

disclosure. Given the modifications to our network change disclosure rules made in the *Triennial Review Order*, we seek comment on whether we should modify § 51.329(c)(1), which enumerates the specific titles that incumbent LECs must use when providing public notice, or certification of public notice, of network changes. Specifically, we seek comment on whether modifying our rules by adding specific titles to identify notices of replacement of copper loops or copper subloops with FTTH loops would assist both incumbent LECs and other parties in determining the applicable notice rules.

20. *Subpart F—Pricing of Elements.* Section 51.515 of the Commission’s rules provides that neither interstate access charges nor comparable intrastate access charges shall be assessed by an incumbent LEC on purchasers of unbundled elements. Paragraphs (b) and (c) of that section, however, permit incumbent LECs to assess certain interstate and intrastate access charges for a limited period of time, but in no event after June 30, 1997. These provisions appear to be no longer applicable because their effective dates have expired. Accordingly, we propose to repeal §§ 51.515 (b) and (c), and seek comment on this proposal.

VI. Part 52—Numbering

21. Part 52 implements the requirements of 251(e) of the Act, which gives the Commission exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States. Part 52 contains rules governing the administration of the NANP, as well as rules that are designed to ensure that users of telecommunications services can retain, at the same location, their existing telephone numbers when they switch from one local exchange telecommunications carrier to another. We seek comment on various provisions in this part to determine whether they remain necessary in the public interest.

22. *Subpart A—Scope and Authority.* On December 23, 2002, WCB took action to allow American Samoa to participate in the NANP and requested that the North American Numbering Plan Administrator (NANPA) set aside ten central office (or NXX) codes in the 684 area code for assignment to carriers operating in American Samoa. We therefore propose to affirm the Bureau’s action by updating § 52.5(c) to include American Samoa on the list of U.S. territories participating in the NANP, and seek comment on this proposal.

23. *Subpart B—Administration.* Through a series of Reports and Orders

issued since the passage of the 1996 Act, the Commission has undertaken a more active role in establishing numbering policy and regulations for the industry to follow. In addition, several aspects of numbering administration have been delegated to state commissions. We therefore propose several modifications to this subpart to more accurately reflect the current roles of the Commission and the industry in numbering administration.

24. The national numbering administrators, which include the NANPA, the Pooling Administrator (PA), and the billing and collection agent are currently selected through a competitive bidding process pursuant to the Federal Acquisitions Regulations (FAR). Thus, the North American Numbering Council (NANC), the Commission’s advisory committee for numbering issues, no longer is responsible for recommending an entity to serve as the NANPA. We therefore propose to repeal § 52.11(d). We also propose to modify §§ 52.13(b) and 52.13(b)(3) to reflect the current role of the Commission in directing policy on and accommodating current and future numbering needs. We further propose to delete references to the Central Office Code Utilization Survey (COCUS), which is no longer used by the NANPA to collect number utilization and forecast information from carriers. We seek comment on these proposals.

25. We also propose to repeal portions of § 52.15 of the Commission’s rules. Paragraph (c) sets forth regulations for telecommunications carriers that perform central office code administration. All such administration is currently performed by the NANPA, so these provisions are no longer applicable. Similarly, paragraphs (d) and (e) address CO code administration functional requirements, and describe procedures for the initial transfer of numbering administration functions from Bellcore and certain carriers to the first NANPA. Because the transfer of these functions occurred more than five years ago, and because the NANPA’s functional requirements are detailed in § 52.13, Commission orders, and industry guidelines, it appears that portions of paragraphs (d) and (e) are no longer applicable. We therefore seek comment on our proposal to modify or delete these provisions.

26. *Subpart C—Number Portability.* We also seek comment on several proposed changes to our local number portability (LNP) rules to reflect the current status of LNP implementation. Specifically, we propose to update § 52.23 to reflect the passage of the deadline for deployment of LNP in the

largest 100 metropolitan statistical areas (MSAs). Specifically, § 52.23(b) sets forth requirements relating to the initial deployment of wireline LNP, which was completed in 1998. Accordingly, we seek comment of whether these rules should be modified. Similarly, §§ 52.23(d) through (f) contain provisions relating to the original deployment schedule for wireline LNP. We also seek comment on whether these rules should be modified. In addition, because the field tests discussed in § 52.23(g) have been completed, this provision is no longer necessary and we propose to repeal it as well. Because long-term database methods for number portability have been developed and implemented, there also appears to no longer be a need for the regulations in §§ 52.27 and 52.29 governing the implementation of transitional measures. We therefore propose to modify these rules. We seek comment on these proposals.

27. Finally, the November 24, 2003 deadline for implementation of LNP by Commercial Mobile Radio Services (CMRS) recently passed. We therefore seek comment on whether certain provisions in § 52.31 of the Commission's rules should be modified. First, we propose to repeal § 52.31(c), which, in its current form, has expired by its own terms. We seek comment on this proposal. Further, because §§ 52.31(d) through (e) contain provisions relating to the original deployment schedule for wireline LNP we seek comment on whether these sections should be retained or modified.

VII. Part 53—Special Provisions Concerning Bell Operating Companies

28. Part 53 of the Commission's rules generally implements the structural safeguards pursuant to section 272 and certain requirements in section 271 of the Act. Section 272 establishes safeguards applicable to BOC equipment manufacturing, provision of in-region interLATA telecommunications service, and provision of interLATA information services (other than electronic publishing and alarm monitoring). Section 271 prescribes certain requirements concerning joint marketing of local exchange and long distance services.

29. *Subpart B—Bell Operating Company Entry Into InterLATA Service.* Section 53.101 provides that BOCs serving more than 5 percent of the national presubscribed access lines may not jointly market their local and interLATA services until the earlier of the BOCs' authorization to provide in-region, interLATA services or February 8, 1999. Because the expiration date of

the prohibition against joint marketing for all BOCs has passed, § 53.101 appears to have expired by its own terms. Thus, we propose to repeal this provision as no longer necessary in the public interest, and seek comment on this proposal.

G. Part 54—Universal Service

30. Sections 214(e) and 254 of the Act direct the Commission to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service. Part 54 promotes universal service by establishing explicit mechanisms to ensure that all consumers, including consumers living in rural, insular, and high-cost areas as well as low-income consumers, have access to affordable telecommunications services. Part 54 is designed to accomplish these goals in a competitively neutral manner by collecting support from every telecommunications carrier that provides interstate telecommunications service, and by making support available on a technologically neutral basis to any eligible service provider. We seek comment below on whether certain provisions in this Part should be modified or repealed because they are no longer necessary in the public interest.

31. *Subpart C—Carriers Eligible for Universal Service Support.* We seek comment on whether there are any state commissions that have not yet designated as an eligible telecommunications carrier a carrier that sought such a designation before January 1, 1998, pursuant to § 54.201(a)(2). If not, it appears that this provision is no longer necessary, and we therefore propose to delete it. We seek comment on this proposal.

32. *Subpart D—Universal Service Support for High Cost Areas.* Sections 54.303(b)(1) through (3) appear to have expired by their own terms. Nevertheless, we note that these provisions may assist carriers in calculating long term support (LTS). Accordingly, we propose retaining §§ 54.303(b)(1) through (3) of our rules and seek comment on this proposal. We also seek comment on whether §§ 54.313(d)(1) and (2), which contain deadlines for the first and second program years, remain necessary. Because these provisions appear to have expired by their own terms, we propose to delete them. We seek comment on this proposal.

33. *Subpart F—Universal Service Support for Schools and Libraries.* Certain provisions in § 54.507(b), particularly paragraphs (1) and (2) regarding funding year 1998–99, appear

to have expired by their own terms. We believe, however, that this section may remain necessary to allow proper adjustment of certain prior funding commitments. We therefore propose to retain and update, rather than repeal, this section, and seek comment on this proposal.

34. *Subpart G—Universal Service Support for Health Care Providers.* We propose to eliminate several sections in this subpart that appear to have expired by their own terms. For example, § 54.604(a)(2) addresses contracts signed after July 10, 1997 but “before the date on which the universal service competitive bid system described in [section 54.603] is operational.” Because it appears that this time period has expired, we propose to delete this provision. Similarly, §§ 54.604(d), 54.623(b), and 54.623(c)(2) and (3) contain provisions that appear to no longer be applicable. We therefore seek comment on whether they should be repealed in whole or in part. We also propose modifying § 54.623(c)(4) by adding language to reflect that applications submitted within subsequent filing periods will be treated as simultaneously received. We seek comment on these proposals.

H. 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

35. Section 214 of the Act provides that no carrier shall undertake the construction of a new line or extension of any line, or shall acquire or operate any line, or extension thereof, without first having obtained a certificate from the Commission that the present or future public convenience and necessity require the construction and/or operation of such extended line. Section 214 also provides that no carrier shall discontinue, reduce or impair service to a community without first having obtained a certificate from the Commission that neither the present nor future public convenience and necessity will be adversely affected by such action. Part 63 of our rules implements these provisions. We seek comment below on whether certain of the provisions in this part are no longer necessary in the public interest.

36. *General Provisions Relating to All Applications Under Section 214; Discontinuance.* Section 63.61 provides that any carrier subject to the provisions of section 214, except a non-dominant carrier as defined in our rules, that seeks to discontinue, reduce, or impair service, must file for and receive

authority from the Commission in order to take such action. Section 63.71 requires that any domestic carrier (including non-dominant carriers) must file for and receive authority from the Commission before discontinuing, reducing, or impairing service. The Commission adopted § 63.71 more recently, and clearly intended its requirements to apply to non-dominant domestic carriers. These requirements in fact have been applied to non-dominant domestic carriers consistently since the rule was adopted.

Nevertheless, because § 63.61 was mistakenly left unchanged when § 63.71 was adopted, we propose to modify § 63.61 to clear up any confusion about non-dominant domestic carriers' obligation to abide by § 63.71. We also propose to correct the erroneous cross-reference to § 61.3(u) in § 63.61, as the term "non-dominant carrier" is defined in § 61.3(y). We further propose to revise §§ 63.61 and 63.71 to make clear that the procedures for the discontinuance, reduction or impairment of international services are governed by § 63.19 of our rules. We seek comment on these proposals.

37. We also propose to correct a discrepancy relating to when customers must file comments with the Commission in response to a carrier's proposed discontinuance, reduction or impairment of service. Section 63.71(a)(5)(i) and (ii) provide boiler plate language for carriers to advise affected customers of a proposed discontinuance, reduction, or impairment of service, and their right to file comments with the Commission within 15 days (30 days for dominant carrier customers) after receipt of said notice. As a practical matter, however, customers have longer than this period because they receive actual notice of the proposed discontinuance before the date of public notice. To illustrate, § 63.71 applications are not deemed filed until the Commission releases public notice of the proposed action, and the publication of this notice generally takes place after the date customers receive notice. Consequently, customers have longer than 15 days (or 30 days if applicant is a dominant service provider) from actual receipt of notice to file comments. We therefore propose to modify these paragraphs to more accurately reflect actual notice periods and procedures. We seek comment on these proposals.

I. Part 64—Miscellaneous Rules Relating to Common Carriers

38. Part 64 of the Commission's rules addresses miscellaneous provisions pertaining to the regulation of common

carriers. Subpart M implements section 276 of the Communications Act of 1934, as amended, concerning the provision of payphone service. These rules govern compensation to payphone providers by carriers that receive calls from payphones; require states to review and remove any state regulation that limits market entry and exit by payphone providers; and establish regulations to ensure that individuals with disabilities can use payphones. Subpart T establishes separate subsidiary requirements applicable to the provision of in-region, interstate domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers. We seek comment on whether certain provisions in these Subparts are no longer necessary in the public interest.

39. *Subpart M—Provision of Payphone Service.* Section 64.1330(c) requires that states review and remove payphone regulations that may impose market entry or exit requirements. Because the September 20, 1998, deadline in this provision has passed, it appears to no longer be applicable. We therefore seek comment on whether this provision should be repealed. In the alternative, we seek comment on whether the requirement for state review of regulations remains necessary, and thus whether we should modify or update, rather than eliminate, this provision. We ask parties to address whether and to what extent these requirements should be extended. We also seek specific comment on whether elimination of this requirement would adversely impact competition or the public interest.

40. *Subpart T—Separate Affiliate Requirements.* Section 64.1903(c) contains a deadline for compliance with the requirements of this section that expired more than six years ago. Accordingly, we propose to delete this provision as no longer necessary, and to modify § 64.1903(a) so that its reference to paragraph (c) is removed. We seek comment on these proposals.

J. Part 69—Access Charges

41. Sections 201 and 202 of the Act require that rates, terms, and conditions for telecommunications services be just and reasonable, and prohibit unjust or unreasonable discrimination. Part 69 implements these sections of the Act by establishing rules that perform several major functions, including establishing the rate structure for access charges to be paid by interexchange carriers to local exchange carriers (LECs) for the origination and termination of long distance calls, as well as the access

charges to be paid directly by end users; governing how rate-of-return LECs calculate their access charge rates; in conjunction with the part 61 price cap rules, establishing the degree of pricing flexibility available to price-cap LECs; and providing for the establishment of the National Exchange Carrier Association (NECA), which files tariffs on behalf of many of the smaller, rate-of-return LECs.

42. *Subpart B—Computation of Charges.* Sections 69.116 and 69.117 establish methodologies to assess charges on certain interexchange carriers for the universal service fund and lifeline assistance, respectively. These sections provided for an effective period from August 1, 1988, through December 31, 1997; thus, it appears that they have expired on their own terms. Accordingly, we propose to repeal §§ 69.116 and 69.117 as no longer necessary, and seek comment on this proposal.

43. Similarly, § 69.126 provides that incumbent local exchange carriers shall not assess any nonrecurring charges for service connections when an interexchange carrier converts trunks from tandem-switched transport to direct-trunked transport, or when an interexchange carrier orders the disconnection of over-provisioned trunks, until six months after the effective date of tariffs eliminating the unitary pricing option for tandem-switched transport. All carriers to which this section applies have eliminated the unitary pricing option for tandem-switched transport. Thus, this provision does not appear to have any remaining relevance. Accordingly, we propose to repeal § 69.126, and seek comment on this proposal.

44. Section 69.127 provides for the retention of the transport rate structure in effect on August 1, 1991, until tariffs filed pursuant to the *Transport Rate Structure and Pricing Report and Order* become effective. Tariffs filed pursuant to that Report and Order have become effective for all applicable carriers. Therefore, by its own terms, § 69.127 is no longer applicable. Accordingly, we propose to repeal § 69.127, and seek comment on this proposal.

45. *Subpart G—Exchange Carrier Association.* Section 69.612 provides for an effective period from July 1, 1994 through December 31, 1997 for long-term support payments to participants in the National Exchange Carrier Association common line tariff. These provisions are no longer applicable because their effective dates have expired. We therefore propose to repeal this section as no longer necessary, and seek comment on this proposal.

VIII. Procedural Matters

A. Ex Parte Presentations

46. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission’s rules.

B. Initial Paperwork Reduction Act Analysis

47. This *NPRM* proposes to eliminate or modify in whole or in part certain information collections. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB comments are due April 19, 2004.

C. Initial Regulatory Flexibility Analysis

48. 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 *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 *NPRM* provided. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for and Objectives of the Proposed Rules

49. In September 2002, the Commission issued Public Notices seeking comment from the public on which rules should be modified or repealed as part of the 2002 Biennial Regulatory Review. The Commission later released a Report addressing certain legal and administrative matters

relating to the biennial regulatory review process. Concurrent with the release of the *2002 Report*, the Commission released the *2002 Regulatory Review Staff Reports*, drafted by several of the Commission’s operating Bureaus and the Office of Engineering and Technology, which summarized their review of the rules under their purview to determine whether to recommend that the Commission modify or repeal such rules. This *NPRM* seeks comment on rules that the Commission believes may be appropriate for repeal or modification because they are outdated, have expired by their own terms, or as a result of competition may no longer be necessary in the public interest in their current form.

2. Legal Basis

50. The legal basis as proposed for this *NPRM* is contained in sections 1, 3, 4, 201–205, 214, 251, 252, 254, 272, 276, and 403 of the Communications Act of 1934, as amended.

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

51. 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 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 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 Small Business Administration (SBA).

52. No new rules are proposed in the *NPRM*; only modifications to or elimination of certain rules. Therefore, the proposals in this proceeding will not likely have a significant (negative) economic impact on service providers, including small entities. In fact, because several information collections are proposed to be eliminated, we expect that any impact on small entities will be positive (*i.e.*, will eliminate economic burdens). Nevertheless, we consider in this IRFA analysis small incumbent local exchange carriers, local exchange carriers, competitive access providers, competitive local exchange carriers, cellular, PCS and other wireless service providers that are small entities.

53. *Small Incumbent Local Exchange Carriers*. We have included small incumbent local exchange carriers 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 local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

54. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and “Other Local Exchange Carriers.”* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to “Other Local Exchange Carriers.” The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 55 carriers reported that they were “Other Local Exchange Carriers.” Of the 55 “Other Local Exchange Carriers,” an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and “Other Local Exchange Carriers” are small entities that may be affected by the rules and policies adopted herein.

55. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the

Commission's most recent data, 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 have 1,500 or fewer employees and 442 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

56. *Broadband Personal Communications Service (PCS)*. The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million in the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

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

57. As stated, the Commission does not propose any new rules that would add reporting, recordkeeping, or other compliance requirements. The Commission proposes only to modify or eliminate certain rules, thereby eliminating economic burdens for small entities. For example, the Commission

seeks proposals on less costly and more efficient ways to collect, preserve and maintain carrier records and reports pursuant to part 42 of its rules. The Commission also seeks to modify or streamline the procedures for disclosing network changes under part 51 of its rules, as these procedures may have become unnecessarily complicated in light of carriers' ability to provide notice of changes and other information via the Internet. In addition, the Commission seeks comment on whether to continue to require carriers to file annually FCC Form 395, which is used to collect statistical information on the racial, ethnic, and gender makeup of a carrier's work force in nine specific job categories. In this *NPRM*, we therefore seek comment on the types of burdens that might be eliminated and encourage entities, especially small businesses, and to quantify, if possible, the costs and benefits of the proposals.

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

58. 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.

59. The *NPRM* seeks comment on proposals to reduce the administrative burden and cost of compliance for small telecommunications service providers. The Commission has accepted the statutory requirement that an alternative be considered when necessary to protect the interests of small entities. We particularly seek comment from contributors that are "small business concerns" under the Small Business Act on the proposals contained in the *NPRM*.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

60. None.

D. Comment Filing Procedures

61. We invite comment on the issues and questions set forth in the *Notice of Proposed Rulemaking* and Initial Regulatory Flexibility Analysis

contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 19, 2004, and reply comments on or before May 3, 2004. All filings should refer to WC Docket No. 02-313. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

62. Comments filed through 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. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is WC Docket No. 02-313. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include 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.

63. 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. Parties who choose to file by paper are hereby notified that effective December 18, 2001, the Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 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. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights MD 20743. This location will be open 8 a.m. to 5:30 p.m. USPS first-class mail, Express Mail, and Priority Mail should

continue to be addressed to the Commission's headquarters at 445 12th Street, SW., Washington, DC 20554. USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method	It should be addressed for delivery to
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m. e.s.t.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554

All filings must be sent to the Commission's Secretary: Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW-A325, Washington, DC 20554.

64. Parties who choose to file by paper should also submit their comments on diskette to Paul Garnett, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5C-3115 Washington, DC 20554. The submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, WC Docket No. 02-313), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file.

65. Regardless of whether parties choose to file electronically or by paper, parties must also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Inc, Portals II, 445 12th Street, SW., Room CY-B402,

Washington, DC 20554. Comments and reply comments will be available on ECFS. Comments and reply comments also will be available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. In addition, the full text of this document is 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. 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.

66. Comments and reply comments should include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with § 1.49 and all other applicable sections of the Commission's rules. Parties should include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the *NPRM* to facilitate our internal review process.

67. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (tty).

IX. Ordering Clauses

68. Pursuant to the authority contained in sections 1, 3, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended, this *Notice of Proposed Rulemaking* is adopted.

69. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Communications common carrier, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 51

Communications common carrier, Telecommunications.

47 CFR Part 52

Communications common carrier, Telecommunications, Telephone.

47 CFR Part 53

Communications common carrier, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Communications common carrier, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 63

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 64

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 36, 51, 52, 53, 54, 63, 64 and 69 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

2. Amend § 36.2 by revising paragraphs (b)(3)(ii) and (b)(3)(iv) to read as follows:

§ 36.2 Fundamental principles underlying procedures.

* * * * *

(b) * * *

(3) * * *

(ii) Holding-time-minutes is the basis for measuring the use of local and toll switching plant.

* * * * *

(iv) Message telecommunications subscriber plant shall be apportioned on

the basis of a Gross Allocator which assigns 25 percent to the interstate jurisdiction and 75 percent to the State jurisdiction.

* * * * *

3. Amend § 36.125 by revising the text of paragraph (f) to read as follows:

§ 36.125 Local switching equipment—Category 3.

* * * * *

(f) Beginning January 1, 1998, for study areas with fewer than 50,000 access lines, Category 3 investment is apportioned to the interstate jurisdiction by the application of an interstate allocation factor that is the lesser of either .85 or the sum of the interstate DEM factor specified in paragraph (a)(5) of this section, and the difference between the 1996 interstate DEM factor and the 1996 interstate DEM factor multiplied by a weighting factor as determined by the table below. The Category 3 investment that is not assigned to the interstate jurisdiction pursuant to this paragraph is assigned to the state jurisdiction.

* * * * *

4. Amend § 36.126 by revising paragraphs (e)(2) and (e)(3) to read as follows:

§ 36.126 Circuit equipment—Category 4.

* * * * *

(e) * * *
(2) Interexchange Circuit Equipment Used for Wideband Service—Category 4.22—This category includes the circuit equipment portion of interexchange channels used for wideband services. The cost of interexchange circuit

equipment in this category is determined separately for each wideband channel and is segregated between message and private line services on the basis of the use of the channels provided. The respective costs are allocated to the appropriate operation in the same manner as the related interexchange cable and wire facilities described in § 36.156.

(3) All Other Interexchange Circuit Equipment—Category 4.23—This category includes the cost of all interexchange circuit equipment not assigned to Categories 4.21 and 4.22. The cost of interexchange basic circuit equipment used for the following classes of circuits is included in this category: Jointly used message circuits, *i.e.*, message switching plant circuits carrying messages from the state and interstate operations; circuits used for state private line services.

(i) An average interexchange circuit equipment cost per equivalent interexchange telephone termination for all circuits is determined and applied to

the equivalent interexchange telephone termination counts of each of the following classes of circuits: Private Line, State Private Line, Message. The cost of interstate private line circuits is assigned directly to the interstate operation. The cost of state private line circuits is assigned directly to the state operation. The cost of message circuits is apportioned between the state and interstate operations on the basis of the relative number of study area conversation-minutes applicable to such facilities.

(ii) The cost of special circuit equipment is segregated among telegraph grade private line services and other private line services based on an analysis of the use of the equipment and in accordance with § 36.126(b)(4). The special circuit equipment cost assigned to telegraph grade and other private line services is directly assigned to the appropriate operations.

* * * * *

5. Amend § 36.142 by revising paragraph (a) to read as follows:

§ 36.142 Categories and apportionment procedures.

(a) *Other Information Origination/Termination Equipment—Category 1.* This category includes the cost of other information origination/termination equipment not assigned to Category 2. The costs of other information origination/termination equipment are allocated pursuant to the factor that is used to subcategory 1.3 Exchange Line C&WF.

* * * * *

6. Amend § 36.152 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 36.152 Categories of Cable and Wire Facilities (C&WF).

(a) * * *

(1) Exchange Line C&WF Excluding Wideband—Category 1—This category includes C&W facilities between local central offices and subscriber premises used for message telephone, private line, local channels, and for circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service.

(2) Wideband and Exchange Trunk C&WF—Category 2—This category includes all wideband, including Exchange Line Wideband and C&WF between local central offices and Wideband facilities. It also includes C&WF between central offices or other switching points used by any common carrier for interlocal trunks wholly within an exchange or metropolitan service area, interlocal trunks with one

or both terminals outside a metropolitan service area carrying some exchange traffic, toll connecting trunks, tandem trunks principally carrying exchange traffic, the exchange trunk portion of WATS access lines, the exchange portion of private line local channels, and the exchange trunk portion of circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service.

* * * * *

7. Amend § 36.154 by revising paragraph (c) and by removing paragraphs (d), (e), and (f) and by redesignating paragraph (g) as paragraph (d) to read as follows:

§ 36.154 Exchange Line Cable and Wire Facilities (C&WF)—Category 1—apportionment procedures.

* * * * *

(c) Effective January 1, 1986, 25 percent of the costs assigned to subcategory 1.3 shall be allocated to the interstate jurisdiction.

* * * * *

8. Amend § 36.156 by revising paragraph (b) to read as follows:

§ 36.156 Interexchange Cable and Wire Facilities (C&WF)—Category 3—apportionment procedures.

* * * * *

(b) The cost of C&WF applicable to this category shall be directly assigned were feasible. If direct assignment is not feasible, cost shall be apportioned between the state and interstate jurisdiction on the basis of conversation-minute kilometers as applied to toll message circuits, etc.

* * * * *

9. Amend § 36.212 by revising paragraph (c) to read as follows:

§ 36.212 Basic local services revenue—Account 5000.

* * * * *

(c) Wideband Message Service revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001, through June 30, 2006, all study areas shall apportion Wideband Message Service revenues among the jurisdictions using the relative number of minutes of use for the twelve-month period ending December 31, 2000.

* * * * *

10. Amend § 36.214 by revising paragraph (a) to read as follows:

§ 36.214 Long distance message revenue—Account 5100.

(a) Wideband message service revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001, through June 30, 2006, all study areas shall apportion Wideband Message Service revenues among the jurisdictions using the relative number of minutes of use for the twelve-month period ending December 31, 2000.

§ 36.375 [Amended]

11. Amend § 36.375 by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(6) as paragraphs (b)(2) through (b)(5).

12. Amend § 36.377 by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, (a)(2)(vii), and (a)(7) introductory text, by removing paragraphs (a)(1)(viii) and (a)(2)(vi), by redesignating paragraph (a)(1)(ix) as paragraph (a)(1)(viii) and redesignating paragraph (a)(2)(vii) as paragraph (a)(2)(vi) to read as follows:

§ 36.377 Category 1—Local business office expense.

(a) * * * (1) End-user service order processing includes expenses related to the receipt and processing of end users' orders for service and inquiries concerning service. This subcategory does not include any service order processing expenses for services provided to the interexchange carriers. End user service order processing expenses are first segregated into the following subcategories based on the relative number of actual contacts which are weighted, if appropriate, to reflect differences in the average work time per contact: Local service order processing; presubscription; directory advertising; State private line and special access; interstate private line and special access; other State message toll including WATS; other interstate message toll including WATS.

(2) End User payment and collection include expenses incurred in relation to the payment and collection of amounts billed to end users. It also includes commissions paid to payment agencies (which receive payment on customer accounts) and collection agencies. This category does not include any payment or collection expenses for services provided to interexchange carriers. End user payment and collection expenses

are first segregated into the following subcategories based on relative total state and interstate billed revenues (excluding revenues billed to interexchange carriers and/or revenues deposited in coin boxes) for services for which end user payment and collection is provided; State private line and special access; interstate private line and special access; State message toll including WATS; interstate message toll including WATS, and interstate subscriber line charge; local, including directory advertising.

(vii) Effective July 1, 2001, through June 30, 2006, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620—Services to the subcategories, as specified in §§ 36.377(a)(3)(i) through 36.377(a)(3)(vi), based on the relative percentage assignment of the balance of Account 6620 to these subcategories during the twelve-month period ending December 31, 2000. Effective July 1, 2001, through June 30, 2006, all study areas shall apportion TWX billing inquiry expense, as specified in § 36.377(a)(3)(v) among the jurisdictions using relative billed TWX revenues for the twelve-month period ending December 31, 2000. All other subcategories of End User payment and collection expense, as specified in §§ 36.377(a)(2)(i) through 36.377(a)(2)(v), shall be directly assigned.

(7) Coin collection and administration includes expenses for the collection and counting of money deposited in public or semi-public phones. It also includes expenses incurred for required travel, coin security, checking the serviceability of public or semi-public telephones, and related functions. These expenses are apportioned between the State and interstate jurisdictions in proportion to the relative State and interstate revenues deposited in the public and semi-public telephones.

13. Amend § 36.631 by removing paragraphs (a) and (b), by redesignating paragraphs (c) through (e) as paragraphs (a) through (c), and by revising newly redesignated paragraph (b) introductory text to read as follows:

§ 36.631 Expense adjustment.

(b) Beginning January 1, 1998, for study areas reporting more than 200,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (b)(1) through

(b)(4) of this section. After January 1, 2000, the expense adjustment (additional interstate expense allocation) for non-rural telephone companies serving study areas reporting more than 200,000 working loops pursuant to § 36.611(h) shall be calculated pursuant to § 54.309 of this chapter or § 54.311 of this chapter (which relies on this part), whichever is applicable.

§ 36.641 [Removed]

14. Remove § 36.641.

Appendix to Part 36—[Amended]

15. In the Appendix to Part 36—Glossary, remove the following terms and their definitions:

- * * * * * TWX TWX Connection TWX Connection-Minute-Kilometers TWX Switching Plant Trunks * * * * *

PART 51—INTERCONNECTION

16. The authority citation continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 303(r) 332, 47 U.S.C. note unless otherwise noted.

§ 51.211 [Removed]

17. Remove § 51.211.

§ 51.213 [Amended]

18. Amend § 51.213 by removing paragraphs (c) and (d).

§ 51.329 [Amended]

19. Amend § 51.329 by removing paragraph (c)(3).

§ 51.515 [Amended]

20. Amend § 51.515 by removing paragraphs (b) and (c) and by redesignating paragraph (d) as paragraph (b).

PART 52—NUMBERING

21. The authority citation continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

22. Amend § 52.5 by revising paragraph (c) to read as follows:

§ 52.5 Definitions.

* * * * *

(c) *North American Numbering Plan* (NANP). The “North American Numbering Plan” is the basic numbering scheme for the telecommunications networks located in American Samoa, Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands).

* * * * *

§ 52.11 [Amended]

23. Amend § 52.11 by removing paragraph (d).

24. Amend § 52.13 by revising paragraphs (b) introductory text and (c)(4) to read as follows:

§ 52.13 North American Numbering Plan Administrator.

* * * * *

(b) The NANPA shall administer the numbering resources identified in paragraph (d) of this section. It shall assign and administer NANP resources in an efficient, effective, fair, unbiased, and non-discriminatory manner consistent with industry-developed guidelines and Commission regulations. It shall support the Commission’s efforts to accommodate current and future numbering needs. It shall perform additional functions, including but not limited to:

* * * * *

(c) * * *

(4) Manage projects such as Numbering Plan Area (NPA) relief (area code relief) planning, Numbering Resource Utilization and Forecast (NRUF) data collection, and NPA and NANP exhaust projection;

* * * * *

25. Amend § 52.15 by removing paragraphs (c) and (e), by redesignating paragraphs (d) through (k) as paragraphs (c) through (i), and by revising paragraph (b)(3) and newly redesignated paragraph (d) to read as follows:

* * * * *

(b) * * *

(3) Conducting the Numbering Resource Utilization and Forecast (NRUF) data collection;

* * * * *

(d) *Central Office (CO) Code Administration functional requirements.* The NANPA shall manage the United States CO code numbering resource, including CO code request processing,

NPA code relief and jeopardy planning, and industry notification functions. The NANPA shall perform its CO code administration functions in accordance with the published industry numbering resource administration guidelines and Commission orders and regulations of 47 CFR chapter I.

* * * * *

§ 52.23 [Amended]

26. Amend § 52.23 by removing paragraph (g).

* * * * *

§ 52.27 [Removed]

27. Remove § 52.27.

§ 52.29 [Removed]

28. Remove § 52.29.

§ 52.31 [Amended]

29. Amend § 52.31 by removing paragraph (c).

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

30. The authority citation continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

§ 53.101 [Removed]

31. Remove § 53.101.

PART 54—UNIVERSAL SERVICE

32. The authority citation continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.201 [Amended]

33. Amend § 54.201 by removing paragraph (a)(2), by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) through (a)(3).

§ 54.313 [Amended]

34. Amend § 54.313 by revising paragraph (d) to read as follows:

§ 54.313 State certification of support for non-rural carriers.

* * * * *

(d) Filing deadlines. In order for a non-rural incumbent local exchange carrier in a particular state, and/or an eligible telecommunications carrier serving lines in the service area of a non-rural incumbent local exchange carrier, to receive high-cost support, the State must file an annual certification, as described in paragraph (c) of this section with both the Administrator and the Commission. Support shall be

provided in accordance with the following schedule.

* * * * *

35. Amend § 54.604 by revising paragraph (a) to read as follows:

§ 54.604 Existing contracts.

(a) A signed contract for services eligible for support pursuant to this subpart between an eligible health care provider as defined under § 54.601 and a telecommunications carrier shall be exempt from the competitive bid requirements set forth in § 54.603(a) if its signed on or before July 10, 1997.

* * * * *

36. Amend § 54.623 by revising paragraph (c) (4) to read as follows:

§ 54.623 Caps.

* * * * *

(c) * * *

(4) The Administrator may implement such additional filing periods as it deems necessary. Applications filed by health care providers within any such additional filing period shall be treated as if they were simultaneously received.

* * * * *

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

37. The authority citation continues to read as follows:

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.

38. Amend § 63.61 by revising the first paragraph to read as follows:

§ 63.61 Applicability.

Any carrier subject to the provisions of section 214 of the Communications Act of 1934, as amended, except any non-dominant carrier as this term is defined in § 61.3(y) of this chapter, proposing to discontinue, reduce, or impair interstate or foreign telephone or telegraph service to a community, or a part of a community, shall request authority therefore by formal application or informal request as specified in the pertinent sections of this part: Provided, however, That where service is expanded on an experimental basis for a temporary period of not more than 6 months, no application shall be required to reduce service to its status prior to such expansion but a written notice shall be

filed with the Commission within 10 days of the reduction showing (a) date on which, places at which, and extent to which service was expanded and (b) date on which, places at which, and extent to which such expansion of service was discontinued: And provided further, That a licensee of a radio station who has filed an application for authority to discontinue service provided by such station shall during the period that such application is pending before the Commission, continue to file appropriate applications as may be necessary for extension or renewal of station license in order to provide legal authorization for such station to continue in operation pending final action on the application for discontinuance of service. Procedures for discontinuance, reduction or impairment of service by dominant and non-dominant, domestic carriers are in § 63.71 of this chapter. Procedures for discontinuance, reduction or impairment of international services are in § 63.19 of this chapter.

* * * * *

39. Amend § 63.71 by revising paragraphs (a)(5)(i) and (a)(5)(ii) and by adding paragraph (d) to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers

* * * * *

- (a) * * *
- (5) * * *

(i) If the carrier is non-dominant with respect to the service being discontinued, reduced or impaired, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20054, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(ii) If the carrier is dominant with respect to the service being

discontinued, reduced or impaired, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 30 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20054, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

* * * * *

(d) Procedures for discontinuance, reduction or impairment of international services are in § 63.19 of this chapter.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

40. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 254(k) and 403(b)(2)(B), (c), Pub. L. 104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

41. Amend § 64.1903 by revising paragraph (a) introductory text and by removing paragraph (c) to read as follows:

§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(a) An incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

* * * * *

PART 69—ACCESS CHARGES

42. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

§ 69.116 [Removed]

43. Remove § 69.116.

§ 69.117 [Removed]

44. Remove § 69.117.

§ 69.126 [Removed]

45. Remove § 69.126.

§ 69.127 [Removed]

46. Remove § 69.127.

§ 69.612 [Removed]

47. Remove § 69.612.

[FR Doc. 04-5657 Filed 3-17-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.040311088-4088-01; I.D. 030104A]

RIN 0648-AQ81

Fisheries of the Northeastern United States; Proposed 2004 Specifications for the Spiny Dogfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2004 fishing year, which is May 1, 2004, through April 30, 2005. The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of this rulemaking is to specify the commercial quota and other management measures, such as possession limits, to rebuild the spiny dogfish resource.

DATES: Public comments must be received (see ADDRESSES) no later than 5 p.m. eastern standard time on April 2, 2004.

ADDRESSES: Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. Mark on the outside of the envelope, "Comments--2004 Spiny Dogfish Specifications." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments on the specifications may be submitted by e-mail. The mailbox address for providing e-mail comments is *DOGAQ81@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: