

§ 43.61 [Removed]

- 5. Remove § 43.61.
- 6. Add § 43.62 to read as follows:

§ 43.62 Reporting requirements for holders of international Section 214 authorizations and providers of international services.

(a) Annual reports. Not later than May 1 of each year, any person or entity that holds an authorization pursuant to section 214 of the Communications Act to provide international telecommunications service; or any person or entity that provided interconnected Voice over Internet Protocol service between the United States (as defined in the Communications Act, as amended, 47 U.S.C. 153) and a foreign point during the previous year; shall submit the following reports:

(1) Any person or entity that holds an authorization pursuant to section 214 to provide international telecommunications service shall report whether it provided international telecommunications services or owned international circuits the preceding year.

(2) Each common carrier engaged in providing international telecommunications service, and each person or entity engaged in providing interconnected Voice over Internet Protocol service, between the United States (as defined in the Communications Act, as amended, 47 U.S.C. 153) and any country or point outside that area shall file a report with the Commission showing revenues, payouts, and traffic for such international telecommunications service and interconnected Voice over Internet Protocol service provided during the preceding calendar year.

(3) Each person or entity owning international facilities between the United States (as defined in the Communications Act, as amended, 47 U.S.C. 153) and any country or point outside that area shall file a circuit-status report with the Commission showing the status of its circuits as of December 31 of the preceding calendar year.

(b) Filing manual. The information required under this section shall be furnished in conformance with the instructions and reporting requirements prepared under the direction of the Chief, International Bureau, prepared and published as a filing manual.

§ 43.82 [Removed]

- 7. Remove § 43.82.

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

8. The authority citation for part 63 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.

9. Section 63.10 is amended by revising paragraphs (c)(2) and (c)(4) as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

\* \* \* \* \*

(c) \* \* \*

(2) File quarterly reports on traffic and revenue, consistent with the reporting requirements authorized pursuant to § 43.62 of this chapter, within 90 days from the end of each calendar quarter;

\* \* \* \* \*

(4) In the case of an authorized facilities-based carrier, file quarterly circuit status reports within 90 days from the end of each calendar quarter in the format set out for circuit status reports by the filing manual for § 43.62 of this chapter, except that activated or idle circuits must be reported on a facility-by-facility basis.

\* \* \* \* \*

10. Section 63.21 is amended by revising paragraph (d) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

\* \* \* \* \*

(d) Carriers must file annual reports of overseas telecommunications traffic as required by § 43.62 of this chapter.

\* \* \* \* \*

11. Section 63.22 is amended by revising paragraph (e) to read as follows:

§ 63.22 Facilities-based international common carriers.

\* \* \* \* \*

(e) The carrier shall file annual international circuit status reports as required by § 43.62 of this chapter.

\* \* \* \* \*

[FR Doc. 2011–18153 File 7–18–11; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 43 and 64

[IB Docket No. 11–80; FCC 11–75]

International Settlements Policy Reform

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission proposes to remove the International Settlements Policy (ISP) from all U.S. international routes except Cuba. Eliminating the ISP will enable more market-based arrangements between U.S. and foreign carriers on all U.S. international routes. The Federal Communications Commission seeks comment on a proposal to enable the Commission to better protect U.S. consumers from the effects of anticompetitive conduct by foreign carriers in instances necessitating Commission intervention. Specifically, it seeks comments on proposals and issues regarding the application of the Commission’s benchmarks policy.

DATES: Submit comments on or before August 18, 2011, and replies on or before September 2, 2011.

ADDRESSES: You may submit comments, identified by Docket No. 11–80, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission’s Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov), phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Kimberly Cook, David Krech or James Ball, Policy Division, International Bureau, FCC, (202) 418–1460 or via the Internet at [Kimberly.Cook@fcc.gov](mailto:Kimberly.Cook@fcc.gov), [David.Krech@fcc.gov](mailto:David.Krech@fcc.gov) and [James.Ball@fcc.gov](mailto:James.Ball@fcc.gov).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking in IB Docket No. 11–80, FCC 11–75, adopted May 12, 2011, and released May 13, 2011. The

full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The document also is available for download over the Internet at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-75A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-75A1.pdf). The complete text also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), located in Room CY-B402, 445 12th Street, SW., Washington, DC 20554. Customers may contact BCPI at its web site: <http://www.bcpweb.com> or call 1-800-378-3160.

### Comment Filing Procedures

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by hand delivery. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) at <http://fjallfoss.fcc.gov/ecfs2/>. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers 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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

### Summary of Notice of Proposed Rulemaking

#### 1. Introduction

In the Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission proposes to remove the International Settlements Policy (ISP) from all U.S. international routes except Cuba. Further, the Commission seeks comment on ways to improve its rules and procedures to enhance its ability to prevent and respond to anticompetitive behavior by foreign carriers in a timely and effective manner. Specifically, the Commission seeks comment on issues and proposals related to the Commission's benchmarks policy and competitive safeguards against anticompetitive behavior. The Commission believes removing the ISP from the remaining international routes will provide U.S. carriers greater flexibility to negotiate lower settlement rates on those routes. The Notice of Proposed Rulemaking seeks comment on whether removal of the ISP from virtually all of the remaining ISP routes will, on balance, result in lower rates and otherwise benefit U.S. consumers. The Notice of Proposed Rulemaking requests comment on whether there are any competitive concerns on a particular U.S. international route that we should consider prior to removing the ISP from that route.

#### 2. ISP

Removing the ISP from the U.S. international routes except Cuba would require amendments to certain Commission rules, and the Notice of Proposed Rulemaking seeks comment on alternatives for amending the Commission's rules, including sections 64.1001, 64.1002 and 43.51. Sections 64.1001 and 64.1002 specify the requirements and procedures that implement the ISP. Section 43.51 specifies the contract filing requirements that apply to U.S. carriers. The Commission proposes to amend section 64.1001 and portions of section 64.1002 which currently codify the ISP and related procedures in the Commission's rules. The Commission also proposes to modify section 43.51 of our rules to reflect the removal of the ISP on all routes except Cuba.

#### 3. Contract Filing

The Commission proposes to require that U.S. carriers file agreements, amendments to agreements (whether

written or oral), and rates for the provision of services (hereinafter referred to collectively as "agreements") when the agreed-upon rates are above benchmark. The requirement would apply to all U.S. international routes involving any foreign correspondent, dominant or non-dominant, for which U.S. outbound rates are above benchmark regardless of whether the ISP previously had been removed from that route or benchmarks had been temporarily achieved at some point in the past. The Commission proposes that the filing requirement also apply when any provision in the contract has the effect of bringing the settlement rate above benchmark even though the stated contract rate is at or below benchmark.

The Commission would consider actions in response to above-benchmark situations on an *ad hoc* basis. Furthermore, upon the filing of an agreement implementing an above-benchmark rate, the International Bureau would issue a public notice of the filing. Alternatively, rather than requiring the filing of an agreement, the Notice of Proposed Rulemaking requests comment on requiring U.S. carriers to file a notice of any agreement (whether written or oral) that includes rates that are above benchmark. This approach would give the Commission the authority to require a U.S. carrier to file the agreement in particular circumstances, but would not require U.S. carriers to file all agreements with the Commission. The Commission might exercise that authority where there is a competitive concern on a particular route or where the Commission receives a complaint from a carrier or from a consumer with respect to that route. The Notice of Proposed Rulemaking proposes retaining the Commission's authority to require U.S. carriers to file agreements and rates for the provision of services on international routes involving any foreign correspondent at any time and upon reasonable request. It proposes to retain the current practice of considering any such agreement filed pursuant to the ISP available for public inspection, and considering all other such agreements not routinely available for public inspection.

#### 4. Enhanced Competitive Safeguards

The Notice of Proposed Rulemaking seeks comment on various competitive safeguards, including the presumption of anticompetitive behavior, possible procedures to expedite Commission action, and remedies for findings of anticompetitive behavior.

### 5. Benchmark Issues

In specific, limited circumstances, the Commission proposes to apply benchmark rates to indirect routing arrangements that U.S. carriers have with third-party carriers in other countries to provide services on U.S. international routes. The Notice of Proposed Rulemaking proposes to apply the Commission's benchmark policy on a case-by-case basis to indirect routing on international routes that are found to be subject to anticompetitive conduct by foreign carriers where additional remedies are required. In applying benchmark rates to reorigination of traffic under the limited circumstances specified above, the Commission would not permit any U.S. carrier serving the international route indirectly to pay a fee to a third-party carrier in an intermediate country for reorigination of traffic greater than the established benchmark rate for termination of traffic to the destination country. The Commission would not impose the restriction except after prior notice and opportunity for comment. The Commission would provide notice and opportunity for comment as part of the order suspending U.S. carrier payments for termination services with carriers in the destination country. The Commission believes that existing benchmark rates would be a sufficient cap on fees paid by U.S. carriers for reorigination of traffic to a destination country on an international route where there is continuing anticompetitive conduct. The notice and comment process described above would give affected carriers an opportunity to contest the reasonableness of applying the benchmark rate for charges above the benchmark rate applicable to the particular destination route subject to the notice. If adopted, the restriction would be imposed by order and removed upon a finding that the anticompetitive conduct on the international route had ceased or under other circumstances that the Commission determined appropriate based upon the record in a particular case. The Notice of Proposed Rulemaking also requests comment on whether there may be other circumstances under which the Commission should apply benchmark rates to alternative or indirect routing arrangements. In particular, it requests comment on a broader approach than that described above if such an approach would allow the Commission to more effectively respond to anticompetitive behavior under certain circumstances.

### 6. Other Issues

Finally, the Notice of Proposed Rulemaking notes that some commenters to the *2005 Notice of Inquiry* and commenters in the proceeding regarding the U.S.-Tonga route argued that U.S. carriers have failed to decrease retail calling rates in proportion to the decrease in settlement rate reductions. Commenters argued that this alleged failure to decrease retail calling rates in proportion to any settlement rate reduction harms U.S. consumers and carriers in foreign countries because U.S. consumers pay higher rates than necessary, which results in lower traffic volumes and reduced terminating revenues received by foreign carriers on the international route. U.S. carriers disputed this argument. The Notice of Proposed Rulemaking noted that section 43.61 traffic and revenue data filed by U.S. carriers show that, on average, U.S. carriers appear to have been flowing through settlement rate reductions in U.S. international calling rates. From 1996 to 2009 (comparing the year before the FCC adopted benchmarks to the most recent year for which data are available), the average IMTS settlement rate paid by U.S. carriers decreased by \$0.37 per minute, while the average IMTS revenue per minute (an estimate of the average U.S. international calling rate) decreased by \$0.66 per minute, more than flowing through settlement rate reductions. The Commission recognizes that this data has certain limitations and may underestimate the level of U.S. international calling rates to some degree. For instance, the IMTS revenue per minute figure is based on revenue reported by facilities-based carriers and, therefore, reflects a mix of wholesale and retail rates. Also, some carriers may not have included non-route-specific calling plan revenue in their revenue figures. We also note that the figures cited above are average numbers and that settlement rates reductions may not have been flowed through uniformly to all segments of the retail market. There is evidence that some U.S. carriers, between 1985 and 2000, increased the retail "basic rates" they charged consumers. Nevertheless, the section 43.61 data covers the entire U.S. facilities-based IMTS industry and all international routes, and shows average IMTS revenue per minute falling much more than the average settlement rate payout. The Commission seeks comment on this issue. In addition to the decrease in the average IMTS settlement rate paid by U.S. carriers as well as a decrease in the average IMTS revenue per minute

received by U.S. carriers, the Commission seeks comment on what other data or factors it should consider in evaluating whether U.S. carriers are passing on reductions in settlement rates to the retail rates they charge consumers. The Commission seeks comment on what action, if any, the Commission should consider taking with respect to these issues.

### 7. Paperwork Reduction Act of 1995 Analysis

The Notice of Proposed Rulemaking proposes new and modified information collection requirements. The Commission, as a part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

### 8. Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (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 provided on the first page of this NPRM. The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>3</sup>

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

In recent years there has been increased participation and competition in the U.S. international marketplace, decreased settlement and end-user rates, and growing liberalization and

<sup>1</sup> See 5 U.S.C. 603. The FRA, see 5 U.S.C. 601-612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. 603(a).

<sup>3</sup> See *id.*

privatization in foreign markets. Because of this increase, the Commission believes that it is an appropriate time to re-examine its International Settlements Policy (ISP) and accounting rate policies. In this proceeding, the Commission expects to obtain further information about the competitive status of the U.S. international marketplace. In addition, the Commission solicits comment on a wide variety of proposals to reform its current application of the ISP, benchmark and settlement rate policies.

#### B. Legal Basis

The Notice of Proposed Rulemaking is authorized under 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 208, 211, 214, 303(r), 309, and 403.

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

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.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>5</sup> 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.<sup>6</sup>

The proposals contained in the Notice of Proposed Rulemaking may directly affect up to approximately 38 facilities-based U.S. international carriers providing IMTS traffic. In the 2009 annual traffic and revenue report 38 facilities-based and facilities-resale carriers reported approximately \$5.8 billion in revenues from international message telephone service (IMTS). Of these, three reported IMTS revenues of more than \$1 billion, eight reported IMTS revenues of more than \$100 million, 10 reported IMTS revenues of more than \$50 million, 20 reported IMTS revenues of more than \$10 million, 25 reported IMTS revenues of more than \$5 million, and 30 reported

IMTS revenues of more than \$1 million. Based solely on their IMTS revenues the majority of these carriers would be considered non-small entities under the SBA definition.<sup>7</sup> Neither the Commission nor the SBA has developed a definition of “small entity” specifically applicable to these international carriers. The closest applicable definition provides that a small entity is one with 1,500 or fewer employees.<sup>8</sup> We do not have data specifying the number of these carriers that are not independently owned and operated and have fewer than 1,500 employees. Furthermore, because not all agreements between the U.S. and foreign carriers are required to be filed at the Commission, it is difficult to determine how many of these 38 carriers might have agreements with foreign carriers. The Notice of Proposed Rulemaking solicits comments on a wide variety of proposals, and the proposals are intended to promote market-based policies and reduce unnecessary regulatory burdens on all facilities-based U.S. international carriers regardless of size.

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

The NPRM seeks a wide variety of information on the Commission’s ISP, benchmarks and international settlement rates policies. In developing these policies, the Commission implemented various reporting requirements to monitor possible anticompetitive behavior and protect the public interest. The NPRM proposes retaining reporting requirements when carriers agree to above-benchmark rates. The NPRM reserves the right to require the filing of particular contracts when presented with evidence of a violation of the “No Special Concessions” rule or of other anticompetitive behavior related to these matters on a particular route. The NPRM solicits comment on whether the Commission should retain, eliminate or develop new/additional reporting requirements. The NPRM seeks comment on possible safeguards that could be implemented to address specific competitive concerns.

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

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.<sup>9</sup>

The proposals in this NPRM are designed to provide the Commission with information to determine whether its existing regulatory regime may inhibit the benefits of lower calling process and greater service innovations to consumers. Because the NPRM is broad and proposals would likely affect only 38 facilities-based carriers, it would be difficult to adopt specific alternatives for the small facilities-based entities. The proposals contained in the NPRM would benefit all entities, including small entities.

The NPRM proposes steps that would minimize the economic impact on all entities, including small entities. For example, the NPRM seeks comment on whether to remove the ISP from certain remaining routes. This proposal would eliminate the burden of seeking prior Commission approval before a carrier could enter into arrangements with foreign carriers. Any changes to our existing policies and rules will expand the ability of all entities, including small entities, to reap the economic benefits of competition. Thus, the NPRM does not propose any exemption for small entities.

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

None.

#### 9. Ordering Clauses

*It is ordered* that, pursuant to the authority contained in 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 208, 211, 214, 303(r), 309 and 403 this Notice of Proposed Rulemaking is *adopted*.

*It is further ordered* that *notice is hereby given* of the proposed regulatory changes to Commission policy and rules described in this Notice of Proposed Rulemaking and that comment is sought on these proposals.

*It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking,

<sup>4</sup> 5 U.S.C. 603(b)(3).

<sup>5</sup> 5 U.S.C. 603(6).

<sup>6</sup> 5 U.S.C. 603(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” 5 U.S.C. 601(3).

<sup>7</sup> See 13 CFR 121.201, NAICS Code at Subsector 517—Telecommunications.

<sup>8</sup> See 13 CFR 121.201, NAICS codes 513310 and 513322.

<sup>9</sup> See 5 U.S.C. 603(c).

including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration.

#### List of Subjects in 47 CFR Parts 0, 43 and 64

Communications, Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

**Bulah P. Wheeler,**  
Deputy Manager.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Parts 0, 43 and 64 of the Commission rules as follows:

#### PART 0—COMMISSION ORGANIZATION

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

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

2. Section 0.453 is amended by revising paragraph (e)(6) to read as follows:

##### § 0.453 Public reference rooms.

\* \* \* \* \*

(e) \* \* \*

(6) Contracts and other arrangements filed under § 43.51(b)(3) of this chapter, except for those that are filed with a request for confidential treatment (see § 0.459) or are deemed confidential pursuant to sec. 412 of the Communications Act (see also § 0.457(c)(3)).

\* \* \* \* \*

3. Section 0.457 is amended by revising paragraph (d)(1)(v) to read as follows:

##### § 0.457 Records not routinely available for public inspection.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(v) The rates, terms and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S. international traffic, including the method for allocating return traffic, except for any agreement with a foreign carrier presumed to have market power, and subject to the international settlements policy set forth in Part 64, Subpart J of this chapter.

\* \* \* \* \*

#### PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

4. The authority citation for part 43 continues to read as follows:

**Authority:** 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted, 47 U.S.C. 211, 219, 220 as amended.

#### Alternative 1 for § 43.51

5. Section 43.51 is amended by revising paragraphs (a)(1) introductory text, (a)(2), and (b)(3), adding paragraph (b)(4), revising paragraphs (d) through (f) and Note 3, and by removing Note 4 to read as follows:

##### § 43.51 Contracts and concessions.

(a)(1) Any communication common carrier described in paragraph (b) of this section must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto (collectively hereinafter referred to as “agreement” for purposes of this rule) with respect to the following:

\* \* \* \* \*

(2) If the agreement is made other than in writing, a certified statement covering all details thereof must be filed by at least one of the parties to the agreement. Each other party to the agreement which is also subject to these provisions may, in lieu of also filing a copy of the agreement, file a certified statement referencing the filed document. The Commission may, at any time and upon reasonable request, require any communication common carrier not subject to the provisions of this section to submit the documents referenced in this section.

(b) \* \* \*

(3) A carrier, other than a provider of commercial mobile radio services, that is engaged in foreign communications, if the agreement is for an international route on the Commission’s “Exclusion List,” and the agreement is with a foreign carrier that is presumed to have market power on the foreign end of the route, pursuant to Note 3 to this section. The Commission’s “Exclusion List” identifies countries and facilities that are not covered by the grant of global section 214 authority under § 63.18(e)(1) of this chapter. This list is available at [http://www.fcc.gov/ib/pd/exclusion\\_list.pdf](http://www.fcc.gov/ib/pd/exclusion_list.pdf); or

(4) A carrier, other than a provider of commercial mobile radio services, that is engaged in foreign communications and enters into an agreement with a foreign carrier, if the agreement provides for a settlement rate above the applicable benchmark rate, or any provision in the contract has the effect of bringing the settlement rate above the

applicable benchmark rate. The Commission established applicable benchmark rates in International Settlement Rates, IB Docket No. 96–261, Report and Order, FCC 97–280, 12 FCC Rcd 19806, 19860 para. 111 (1997) (*Benchmarks Order*); Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*); *aff’d sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

\* \* \* \* \*

(d) Agreements between a carrier and a foreign carrier that are not included in paragraph (b) of this section are not required to be filed with the Commission pursuant to paragraph (a) of this section, but each U.S. carrier subject to such an agreement shall maintain a copy of it, and upon request by the Commission, shall promptly forward individual agreements to the Commission.

(e) Other filing requirements for carriers providing service on a U.S. international route that is subject to the international settlements policy as set forth in § 64.1002 of this chapter:

(1) If a U.S. carrier files an agreement with a foreign carrier pursuant to paragraph (a) and (b)(3) of this section to begin providing switched voice service between the United States and the foreign point, the carrier must also file with the International Bureau a modification request under § 64.1001 of this chapter. The operating or other agreement cannot become effective until the modification request has been granted under paragraph § 64.1001(e) of this chapter.

(2) If a U.S. carrier files an amendment pursuant to paragraph (a) and (b)(3) of this section, to an existing operating or other agreement with a foreign carrier to provide switched voice service between the United States and a foreign point, and the amendment relates to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, the carrier may need to file with the International Bureau a modification request under § 64.1001 of this chapter. The amendment to the operating or other agreement cannot become effective until the modification request has been granted under § 64.1001(e) of this chapter.

(f) *Confidential treatment.* (1) Agreements filed with the Commission pursuant to the requirements of paragraphs (a) and (b)(3) of this section shall be considered as routinely available for public inspection under

§ 0.453(e)(6) of this chapter. Carriers may request confidential treatment under §§ 0.457 and 0.459 of this chapter for the rates, terms and conditions that govern the settlement of U.S. international traffic.

(2) Carriers requesting confidential treatment of agreements filed pursuant to paragraphs (a) and (b)(3) of this section must include the information specified in § 64.1001(c) of this chapter. Such filings shall be made with the Commission, with a copy to the Chief, International Bureau. The transmittal letter accompanying the confidential filing shall clearly identify the filing as responsive to § 43.51(f).

(3) Agreements filed with the Commission pursuant to the requirements of paragraphs (a) and (b)(4) of this section shall be considered as not routinely available for public inspection pursuant to § 0.457(d)(1)(v) (Any request that these materials be made available for public inspection must be under the provisions of § 0.461 of this chapter).

\* \* \* \* \*

**Note 3 to § 43.51:** Carriers shall rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which of their foreign carrier contracts are subject to the contract filing requirements set forth in paragraphs (a) and (b)(3) of this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>. The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

**Alternative 2 for § 43.51**

6. Section 43.51 is amended by revising paragraphs (a)(1) introductory

text, (a)(2), (b)(3), (d) through (f) and Note 3, and by removing Note 4 to read as follows:

**§ 43.51 Contracts and concessions.**

(a)(1) Any communication common carrier described in paragraph (b) of this section must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto (collectively hereinafter referred to as "agreement" for purposes of this rule) with respect to the following:

\* \* \* \* \*

(2) If the agreement is made other than in writing, a certified statement covering all details thereof must be filed by at least one of the parties to the agreement. Each other party to the agreement which is also subject to these provisions may, in lieu of also filing a copy of the agreement, file a certified statement referencing the filed document. The Commission may, at any time and upon reasonable request, require any communication common carrier not subject to the provisions of this section to submit the documents referenced in this section.

(b) \* \* \*

(3) A carrier, other than a provider of commercial mobile radio services, that is engaged in foreign communications, if the agreement is for an international route on the Commission's "Exclusion List," and the agreement is with a foreign carrier that is presumed to have market power on the foreign end of the route, pursuant to Note 3 to this section. The Commission's "Exclusion List" identifies countries and facilities that are not covered by the grant of global section 214 authority under section 63.18(e)(1) of the Commission's rules. This list is available at [http://www.fcc.gov/ib/pd/exclusion\\_list.pdf](http://www.fcc.gov/ib/pd/exclusion_list.pdf).

\* \* \* \* \*

(d) A carrier, other than a provider of commercial mobile radio services, that is engaged in foreign communications, and enters into an agreement with a foreign carrier, must notify the International Bureau of any agreement within 30 days of the execution of the agreement, if the agreement provides for a settlement rate above the applicable benchmark rate, or any provision in the contract has the effect of bringing the settlement rate above the applicable benchmark rate. The Commission has the authority to require the U.S. carrier providing service on U.S. international routes to file a copy of each agreement to which it is a party. The Commission

established applicable benchmark rates in *International Settlement Rates*, IB Docket No. 96-261, Report and Order, FCC 97-280, 12 FCC Rcd 19806, 19860 para. 111 (1997) (*Benchmarks Order*); Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*); *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

(e) Other filing requirements for carriers providing service on U.S. international routes that are subject to the international settlements policy as set forth in § 64.1002 of this chapter:

(1) For routes subject to the international settlements policy set forth in § 64.1002 of this chapter, if a U.S. carrier files an operating or other agreement with a foreign carrier pursuant to paragraph (a) of this section to begin providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point, the carrier must also file with the International Bureau a modification request under § 64.1001 of this chapter. The operating or other agreement cannot become effective until the modification request has been granted under paragraph § 64.1001(e) of this chapter.

(2) For routes subject to the international settlements policy, if a carrier files an amendment, pursuant to paragraph (a) of this section, to an existing operating or other agreement with a foreign carrier to provide switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point, and the amendment relates to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, the carrier must also file with the International Bureau a modification request under § 64.1001 of this chapter. The amendment to the operating or other agreement cannot become effective until the modification request has been granted under § 64.1001(e) of this chapter.

(f) *Confidential treatment.* (1) Agreements filed with the Commission pursuant to the requirements of paragraphs (a) and (b)(3) of this section shall be considered as routinely available for public inspection under § 0.453(e)(6) of this chapter. Carriers may request confidential treatment under § 0.457 of this chapter for the rates, terms and conditions that govern the settlement of U.S. international traffic.

(2) Carriers requesting confidential treatment under this paragraph must

include the information specified in § 64.1001(c) of this chapter. Such filings shall be made with the Commission, with a copy to the Chief, International Bureau. The transmittal letter accompanying the confidential filing shall clearly identify the filing as responsive to § 43.51(f).

\* \* \* \* \*

**Note 3 to § 43.51:** Carriers shall rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which of their foreign carrier contracts are subject to the contract filing requirements set forth in paragraphs (a) and (b)(3) of this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>. The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

7. The authority citation for part 64 continues to read as follows:

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

8. Section 64.1001 is amended by revising paragraph (a) to read as follows:

### § 64.1001 Requests to modify international settlements arrangements.

(a) The procedures set forth in this rule apply to carrier requests to modify international settlement arrangements on any U.S. international route listed on the Commission's "Exclusion List." See [http://www.fcc.gov/ib/pd/exclusion\\_list.pdf](http://www.fcc.gov/ib/pd/exclusion_list.pdf). Any operating

agreement or amendment for which a modification request is required to be filed cannot become effective until the modification request has been granted under paragraph (e) of this section.

\* \* \* \* \*

9. Section 64.1002 is amended by revising the introductory text of paragraph (a), removing and reserving paragraph (b) and revising paragraphs (c) and (d) to read as follows:

### § 64.1002 International settlements policy.

(a) A common carrier that is authorized pursuant to part 63 of this chapter to provide facilities-based switched voice service on a U.S. international route that is listed on the Commission's "Exclusion List" ([http://www.fcc.gov/ib/pd/exclusion\\_list.pdf](http://www.fcc.gov/ib/pd/exclusion_list.pdf)), and that enters into an operating or other agreement to provide any such service in correspondence with a foreign carrier that does not qualify for the presumption that it lacks market power on the foreign end of the route, must comply with the following requirements:

\* \* \* \* \*

(b) [Reserved].

(c) A carrier that seeks to exempt from the international settlements policy an international route on the "Exclusion List" must make its request to the International Bureau, accompanied by a showing that a U.S. carrier has entered into a benchmark-compliant settlement rate agreement with a foreign carrier that possesses market power in the country at the foreign end of the U.S. international route that is the subject of the request. The required showing shall consist of an effective accounting rate modification, filed pursuant to § 64.1001, that includes a settlement rate that is at or below the Commission's benchmark settlement rate adopted for that country in IB Docket No. 96–261, Report and Order, 12 FCC Rcd 19,806, 62 FR 45758, Aug. 29, 1997, available on the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(d) A carrier or other party may request Commission intervention on any U.S. international route for which competitive problems are alleged by filing with the International Bureau a petition, pursuant to this section, demonstrating anticompetitive behavior that is harmful to U.S. customers. The Commission may also act on its own motion. Carriers and other parties filing complaints must support their petitions with evidence, including an affidavit and relevant commercial agreements. The International Bureau will review complaints on a case-by-case basis and take appropriate action on delegated

authority pursuant to § 0.261 of this chapter. Interested parties will have 10 days from the date of issuance of a public notice of the petition to file comments or oppositions to such petitions and subsequently 7 days for replies. In the event significant, immediate harm to the public interest is likely to occur that cannot be addressed through post facto remedies, the International Bureau may impose temporary requirements on carriers authorized pursuant to § 63.18 of this chapter without prejudice to its findings on such petitions.

\* \* \* \* \*

[FR Doc. 2011–17368 Filed 7–18–11; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R6–ES–2010–0047; MO 92210–0–0008]

### Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List *Pinus albicaulis* as Endangered or Threatened With Critical Habitat

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

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list *Pinus albicaulis* (whitebark pine) as threatened or endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing *P. albicaulis* as threatened or endangered is warranted. However, currently listing *P. albicaulis* is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add *P. albicaulis* to our candidate species list. We will develop a proposed rule to list *P. albicaulis* as our priorities and funding will allow. We will make any determination on critical habitat during development of the proposed listing rule. In any interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review.

**DATES:** The finding announced in this document was made on July 19, 2011.