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**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: May 18, 2004.

**Richard J. Kampf,**

*Acting Regional Administrator, Region III.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 43 and 63

[IB Docket No. 04-112; FCC No. 04-70]

#### Reporting Requirements for U.S. Providers of International Telecommunications Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document is a summary of the Notice of Proposed Rulemaking adopted by the Commission in this proceeding. The Commission seeks comment on the continued need for traffic and revenue reports and facilities-use reports and on proposals that simplify and the reports that carriers must file. The Commission also seeks comment of the elimination of requirement that international telegraph carriers file their contracts with their foreign correspondents.

**DATES:** Comments are due to be filed by July 26, 2004, and reply comments are due to be filed by August 23, 2004. OMB, the general public, and other Federal agencies are invited to comment on the information collection requirements on or before July 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** David Krech or John Copes, Policy

Division, International Bureau, (202) 418-1460. For information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202-418-0214, or via the Internet at [JudithB.Herman@fcc.gov](mailto:JudithB.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking* in IB Docket No. 04-112, FCC 04-70, adopted March 24, 2004. The full text of this Commission decision 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 is also available for download over the Internet at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-04-70.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-70.pdf). The complete text may also be purchased from the Commission's copy contractor, Qualex International, in person at 445 12th Street, SW., Room CY-B402, Washington, DC. 20554, via telephone at (202) 863-2893, via facsimile at (202) 863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com). This Notice of Proposed Rulemaking (NPRM) contains proposed new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-3. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collections contained in this proceeding.

#### Summary of Notice of Proposed Rulemaking

On March 24, 2004, the Commission adopted a Notice of Proposed Rulemaking in the Matter of Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rule (NPRM). In the NPRM, the Commission undertakes a comprehensive review of the reporting requirements to which carriers providing U.S. international services are subject under part 43 of the rules. The NPRM seeks comment on changes to simplify the reporting requirements and to ensure the usefulness of the data collected by the Commission.

The NPRM seeks comment on whether to retain the annual traffic and revenue reporting requirements. Currently, § 43.61(a) requires international telecommunications carriers to file annual reports setting forth their traffic and revenues for each international service they provide. Section 43.82 of the Commission's rules requires facilities-based U.S.

international telecommunications carriers to file annual circuit-status reports that detail, as of December 31st each year, the number of circuits they own or lease to each country they serve and the services for which they use each such circuit. The NPRM seeks comment on whether to retain the § 43.53 telegraph carrier report.

The NPRM tentatively concludes that the § 43.61 traffic and revenue reports and the § 43.82 circuit-status reports continue to be needed and proposes to retain them. The NPRM, however, proposes certain simplifications to lessen the burden on the carriers of filing the reports and, in a few cases, proposes to expand the information carriers are required to file to make the reports more useful under current conditions in the international telecommunications market.

The NPRM proposes a number of ways to simplify the § 43.61 traffic and revenue reports and § 43.82 circuit-status report. For example, the NPRM proposes to eliminate the current requirement in the annual traffic and revenue report that carriers file the number of messages they carry to and from the foreign countries they serve, requiring only that they continue to report the number of minutes they handle and the amount of revenues associated with those minutes. Second, the NPRM proposes to eliminate the current requirement that carriers file traffic and revenue information or circuit-status information for services they offer between the U.S. Mainland and offshore U.S. points such as Hawaii and Puerto Rico or traffic carried between two such offshore U.S. points. Third, the NPRM proposes to establish a \$5 million annual revenue threshold for reporting U.S. international resale telephone services. That is, U.S. carriers that provide international telephone service on a resale basis do not have to file an annual traffic and revenue report unless their annual resale revenues exceed \$5 million. Similarly, the NPRM proposes to implement a \$5 million annual revenue threshold also for "miscellaneous" international services, *i.e.*, services other than international telephone service. The NPRM includes a staff proposal that recommends a number of ways to simplify the information that international carriers must report on covered services. The staff proposal is available for download over the Internet at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-04-70A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-70A1.pdf).

The NPRM also seeks comment on the need to retain the § 43.61(b) and § 43.61(c) quarterly traffic and revenue reports. If the Commission ultimately

concludes that it should retain the quarterly reports, the simplifications proposed for the annual traffic and revenue reports would apply to the retained quarterly reports as well.

The NPRM proposes to require all carriers that own international transmission facilities to file the annual circuit-status reports. At present, only common-carrier service providers are required to file circuit-status information. The NPRM proposes to require owners of non-common-carrier international transmission facilities also to file. Since the circuit-status report was adopted, the mix of common-carrier and non-common-carrier international transmission facilities has shifted so that currently common-carrier facilities represent less than 10 percent of all international transmission facilities. To keep the Commission informed about the availability and usage of international transmission facilities, it will be necessary for it to have information on both common-carrier and non-common-carrier facilities.

The NPRM also proposes to eliminate the § 43.53 telegraph carriers reporting requirement. The NPRM notes that international telegraph services have sharply declined in importance and that no useful purpose would be served by requiring such carriers to file their overseas contracts.

### Procedural Matters

#### *Initial Paperwork Reduction Act Analysis*

This NPRM contained proposed new information collections. The Commission, as 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(s) contained in this NPRM, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due July 26, 2004. PRA comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0106.

Title: Section 43.61—Reports of Overseas Telecommunications Traffic.

Form No.: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 134.

Estimated Time Per Response: 18 hours.

Frequency of Response: Quarterly, Annual, on occasion.

Total Annual Burden: 2412 hours.

Total Annual Costs: \$216,524.

Needs and Uses: The information will be used by the Commission staff for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities.

OMB Control Number: 3060–0572.

Title: Filing Manual for Annual International Circuit Status Reports.

Form No.: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 138.

Estimated Time Per Response: 11 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 1,540 hours.

Total Annual Costs: \$42,600.

Needs and Uses: The information will enable the Commission to discharge its obligation to authorize the construction and use of international common carrier transmission facilities. The information will be used by the Commission and the industry as to whether an international common carrier is providing direct or indirect service to countries and to assess industry trends in the use of international transmission facilities. The information is extremely valuable because it is not available from any other source.

#### **Final Regulatory Flexibility Act Analysis**

As required by the Regulatory Flexibility Act (RFA), as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). (See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).)

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 Notice July 26, 2004. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA will be published in the **Federal Register**

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

The Commission initiated this comprehensive review of the reporting requirements imposed on U.S. carriers providing international telecommunications services. The Commission believes that the proposals contained in the NPRM will make it easier for carriers, both small and large, to provide the information required by the rules. In addition, section 11 of the Telecommunications Act of 1996 directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act of 1934, as amended.

The objective of this proceeding is to improve the reporting requirements of §§ 43.61 and 43.82 imposed on carriers providing international telecommunications services. Specifically, the NPRM proposes to simplify, consolidate, and revise the annual traffic and revenue reporting requirements and the circuit-status reporting requirements. Also, the NPRM proposes to eliminate several reporting requirements.

Currently, § 43.61 requires that all international telecommunications carriers file an annual report of their traffic and revenues. In addition, § 43.61 sets forth additional reporting requirements for specific carriers that meet the criteria set forth in the rule. Under § 43.82, facilities-based common carriers providing international telecommunications services must file an annual report on the status of their circuits. The information derived from the international revenue and traffic report and circuit-status report is critical in understanding the international telecommunications market. These reports are the only source of publicly available information of this nature.

The information obtained from these reports is used extensively by the Commission, the industry, other government agencies, and the public. The Commission uses the information to evaluate applications for international facilities, track market developments and the competitiveness of each service and geographical market to formulate

rules and policies consistent with the public interest, monitor compliance with those rules and policies, and gauge the competitive effect of its decisions on the market. The information is used to ensure compliance with the Commission's international rules and policies. The information enables the Commission to tailor policies to respond to the market developments on a particular route. The Commission also uses the information to identify those routes for which settlement rates are at a level low enough to permit relief from certain regulatory requirements, including the prohibition on the use of private lines for the provision of switched, basic services ("ISR"). Carriers use the information to track the balance of payments in international communications services and for market analysis purposes. Carriers and potential entrants use the information for, among other things, assessment of market opportunities and to monitor competition in markets. The Commission, along with other government agencies, uses the information in merger analyses and negotiations with foreign countries. In addition, the information contained in the circuit-status report allows the Commission to comply with the statutory requirements of the Omnibus Budget Reconciliation Act of 1993.

#### B. Legal Basis

The NPRM is adopted pursuant to sections 1, 4(i) and (j), 11, 201–205, 211, 214, 219, 220, 330(r), 309, and 403 of the Communications Act of 1934 as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 211, 214, 219, 220, 303(r), 309, and 403.

#### C. Description and Estimate of the Number of Small Entities to Which the Proposals 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 proposals, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

The proposals in the NPRM apply only to entities providing international common carrier services pursuant to

section 214 of the Communications Act; entities providing domestic or international wireless common carrier services under section 309 of the Act; entities providing common carrier or non-common carrier satellite services under section 309 of the Act; and entities licensed to construct and operate submarine cables under the Cable Landing License Act on a common carrier or non-common carrier basis. The Commission has not developed a definition of small entities applicable to these entities. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Telecommunications Services (see 13 CFR 121.201, NAICS Code.) According to the SBA definition, wired telecommunications carriers, cellular and other wireless providers, and telecommunications resellers would be considered small entities if they employ 1,500 employees or less. The definition also considers satellite or other telecommunications providers as small entities if they have \$12.5 million or less in annual receipts. (See 13 CFR 121.201, NAICS Code at Subsector 517—Telecommunications.)

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. (See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999).) The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). 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 analysis and determinations in other, non-RFA contexts.

The carriers required to file the traffic and revenue and circuit-status reports are both large and small entities. In the 2001 annual traffic and revenue report, 625 carriers reported that they provided

international message telephone service (IMTS) on a pure resale basis. (See FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "2001 International Telecommunications Data" at page 1, Statistical Findings (January 2003). FCC Web site location <http://www.fcc.gov/wcb/iatd/intl.html>.) Pure resale providers resell the services of underlying U.S. facilities-based and facilities-resale carriers. Pure resale service is primarily provided by small businesses. For example, of the 625 carriers, 277 carriers had revenues less than \$10,000; 482 had revenues less than \$500,000; and 513 had revenues less than \$1 million. The report also shows that 52 U.S. facilities-based and facilities-resale carriers reported that they billed \$10.8 billion for IMTS service, \$1.4 billion for private line services, and \$0.2 billion for international telex, telegraph, and other miscellaneous services. These carriers would be considered large entities under the SBA definition. (See 13 CFR 121.201, NAICS Code at Subsector 517—Telecommunications.) According to the 2002 Circuit-Status Report, 79 U.S. international facility-based carriers filed information pursuant to § 43.82. (See *International Bureau Releases 2002 Year-End Circuit Status Report for U.S. Facilities-Based International Carriers; Capacity Use Shows Modest Growth*, rel. Dec. 24, 2003. The report is available on the FCC Web site at <http://www.fcc.gov/ib/pd/pf/csmanual.html>.)

The report does not yield employee or revenue statistics, so it is impossible for use to determine how many carriers could be considered small entities. Although it is quite possible that a carrier could report a small amount of capacity and have significant revenues, we will consider those carriers small entities at this time. Thus, of the 79 carriers filing the annual circuit-status report for 2002, there were at least 8 carriers that could be considered small entities because they did not have any circuits in 2002.

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

The NPRM proposes to retain the annual traffic and revenue reporting requirements and the circuit-status reporting requirements because the collection and public reporting of this information continues to be necessary in the public interest. The NPRM, however, proposes to simplify and clarify the reporting requirements to reduce the burdens for both small and large carriers. Because carriers currently are required to file annual traffic and

revenue and circuit-status reports, the proposals contained in the NPRM will not impose any significant economic burden on small carriers. The information contained in the proposed reporting requirements is the same information that the carriers collect and maintain during the routine course of business. The NPRM contains a staff recommendation on the proposed reporting requirements, including eight proposed schedules that show the specific information that carriers would be required to report and how they would report it. The proposed reporting requirements are described below. However, because the Commission may change the reporting proposed in the NPRM based on comments received in this proceeding, consequently, the schedules would also change.

Schedule 1 contains a proposed summary report that applies to all entities, both small and large. This report would be a one-page form that international section 214 authorization holders would be required to file annually. The generic form would require a carrier to provide basic information about its international section 214 authorization. Specifically, the carrier would be required to provide its name, its Form 499-A identification number, its Commission Registration System (CORES) identification number, and a list of the international section 214 authorizations that it holds. In addition, the carrier would provide basic information about the services that it provided the previous year. Based on the services the responding carriers reported, the schedule would inform the carrier which other schedules, if any, the carrier would be required to complete. The schedule would provide the carriers with information on which of its entities are required to file, including subsidiaries of the authorization holder that might need to file separately.

Proposed Schedules 2 and 3 would require carriers to submit information on IMTS and seek country-by-country traffic and revenue information. Schedule 2 will require carriers to provide the information on "outbound" IMTS traffic, whereas Schedule 3 will require carriers to provide the information on "inbound" IMTS traffic. Under Schedule 2, carriers would report, their minutes and revenues/payouts if the "source of traffic" is from end users or another U.S. carrier and the carrier terminates those minutes with a foreign carrier, on the spot marked, or self terminates in the foreign country.

Proposed Schedule 3 would require carriers to report, on a country-by-country basis, the number of inbound

minutes of IMTS carriers receive from their overseas correspondents and the dollar amounts they receive for terminating that traffic. Also, carriers would be required to continue to separate the inbound traffic they receive under the traditional settlement arrangements from inbound traffic they receive under all other arrangements, such as ISR, hubbing, etc.

Proposed Schedule 4 would require carriers to provide additional detail on a world total basis for the IMTS minutes and revenues for traffic billed to U.S. customers and for traffic billed to others. Carriers would be required to report the minutes of collect calls, international toll-free calls, country-beyond calls, and country-direct calls they handle. When reporting this information, carriers would be required to provide separate data for the minutes they receive from foreign carriers for traditional IMTS transit traffic, refilled traffic, and traffic received from spot markets.

Proposed Schedule 5 would require pure resale carriers with over \$5 million in revenue from international services to report their U.S.-customer minutes and revenues separately for U.S. end-user traffic, traffic handled for other U.S. carriers, and traffic re-originated for foreign carriers.

Proposed Schedule 6 would require carriers to provide country-by-country information on their international private-line services. Carriers would be required to report separately service provided over facilities they own and service provided over resold circuits. Proposed Schedule 6 includes a new category called "Data Services" to ensure proper reporting of several new services that carriers have begun to offer in recent years.

Proposed Schedule 7 would require carriers to provide information regarding miscellaneous services. Services other than IMTS and private-line service would be considered miscellaneous services. Carriers would be required to provide a minimal amount of information on the new services, such as the name of each service and the total annual revenues the carriers derived from the service.

Proposed Schedule 8 would require carriers to provide a snapshot of their active and idle circuits as of December 31st of each year. Carriers would be required to report their circuit capacity on the basis of the type of facilities they use to provide service—submarine cables, satellites, and terrestrial links. Carriers would be required to report their circuit use in units of 64 Kilobit per second (Kbps) equivalent circuits.

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

The RFA requires an agency to describe any significant, specifically small business, 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 and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities."

The NPRM seeks comment on a number of proposals to simplify and consolidate the reporting requirements for carriers providing international telecommunications services. The proposals in the NPRM are designed to reduce the regulatory requirements for both small and large carriers, while maintaining and enhancing the goals the reports serve. The Commission will also consider other additional significant alternatives developed in the record.

The possible change to the reporting requirements with the most significant impact on small carriers is the proposal to exempt pure resale carriers with less than \$5 million in revenues from international services the preceding year from filing reports. Based on the number of carriers filing the annual traffic and revenue report in 2001, the majority of carriers would be considered small carriers. (See FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "2001 International Telecommunications Data" at page 1, Statistical Findings (January 2003). FCC Web site location <http://www.fcc.gov/wcb/iatd/intl.html>.) This proposal would benefit a substantial number of small entities by relieving them from certain reporting requirements.

The NPRM proposes to simplify the information that the carriers, both small and large, must submit for any traffic and revenue reports. First, the NPRM proposes to eliminate the requirement that carriers provide information on the number of messages that they carried the previous year. Second, the NPRM proposes to eliminate the requirement that carriers use the billing codes set out in the § 43.61 Filing Manual and the Public Notices. Currently, carriers report international telephone traffic under 12 different billing codes, and the various

billing codes have presented recurring problems for carriers filing the reports as well as those who review the reports. Third, the NPRM proposes a set of schedules for the reporting of the traffic and revenue and circuit-status information in lieu of the two filing manuals that are currently used. The Notice proposes to streamline some of the reporting categories, which will reduce the reporting requirements on both small and large entities.

The NPRM proposes to consolidate § 43.61 (traffic and revenue reporting requirement) and § 43.82 (circuit-status reporting requirement) into one rule. Consolidating the rules will eliminate the requirement that carriers file two separate reports—one for traffic and revenue data and one for circuit-status data. The Notice proposes that one filing manual be developed that will satisfy the reporting requirements of the new rule. One consolidated filing manual for both reports would be less confusing and less time-consuming for both small and large carriers.

The NPRM also proposes to require carriers to file the report earlier than currently required in order to improve the timeliness of the resulting report. In selecting a proposed filing date, the Commission tried to balance the need for more expeditious filing with any burden an earlier filing would place on carriers. In addition, with more timely-filed data, it would be unnecessary for carriers to file corrected traffic and revenue data. The proposed new filing date minimizes any burden on the carriers because it does not coincide with any other reporting requirements. Also, carriers will not be burdened with filing another report with corrected data.

The NPRM proposes changes in the format under which the carriers file the reports. The NPRM proposes replacing the current DOS-based filing procedures with spreadsheet-based reporting thereby allowing carriers to file their data using a commercial spreadsheet program. This proposal should substantially reduce the burden on all carriers, both small and large, in preparing their data submissions. Also, carriers filing schedules that do not require country-by-country data could easily prepare and submit such information online. This, too, would substantially reduce the burden on the filing carrier, facilitate interactive edit checks, and allow data to be automatically loaded into the Commission's database programs.

The NPRM seeks comment on whether it would significantly speed and facilitate the submission of data if the Commission were to encourage or

mandate carriers to submit their data electronically. Electronic filing would lessen the burden of filing the reports for both small and large carriers. Because carriers maintain the data electronically, it would be practicable for carriers to submit the data in the same format rather than convert the data into a different format.

The NPRM proposes a general report that will make it very simple for a carrier to determine which, if any, reporting requirements are applicable to the carrier. In addition, this proposal will simplify a carrier's compliance with other reporting requirements, such as the Form 499-A.

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

None.

#### Ordering Clauses

Accordingly, pursuant to the authority contained in sections 1, 4(i), 4(j), 11, 201–205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 161, 201–205, 211, 214, 219, 220, 303(r), 309 and 403, this notice of proposed rulemaking is hereby adopted and comments are requested as described above.

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 Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

#### **List of Subjects in 47 CFR Parts 1, 43 and 63**

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications. Federal Communications Commission.

**Marlene H. Dortch**,  
*Secretary.*

#### **Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 43 and 63 as follows:

#### **PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

#### **§ 1.789 [Removed]**

2. Remove § 1.789.

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

3. 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.

#### **§ 43.53 [Removed]**

4. Remove § 43.53.

5. Section 43.61 is revised to read as follows:

#### **§ 43.61 Reporting requirements for U.S. international carriers.**

(a) *Annual traffic and revenue reports.* Each carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and off-shore U.S. points and any country or point outside that area shall file a report with the Commissions not later than May 1, of each year showing traffic and revenue for international services provided in the preceding calendar year.

(b) *Quarterly traffic reports for facilities-based carriers.* (1) Each common carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and off-shore U.S. points and any country or point outside that area shall file with the Commission, in addition to the report required by paragraph (a) of this section, actual traffic and revenue data for each calendar quarter in which the carrier's quarterly minutes exceed the corresponding minutes for all carriers by one or more of the following tests:

(i) The carrier's aggregate minutes of facilities-based or private-line resale switched telephone traffic for service billed in the United States are greater than 1.0 percent of the total of such minutes of international traffic for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic;

(ii) The carrier's aggregate minutes of facilities-based or private-line resale switched telephone traffic for service billed outside the United States are greater than 1.0 percent of the total of such minutes of international traffic for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic;

(iii) The carrier's aggregate minutes of facilities-based or private-line resale switched telephone traffic for service billed in the United States for any foreign country are greater than 2.5 percent of the total of such minutes of international traffic for that country for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic; or

(iv) The carrier's aggregate minutes of facilities-based or private-line resale switched telephone traffic for service billed outside the United States for any foreign country are greater than 2.5 percent of the total of such minutes of international traffic for that country for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic.

(2) Except as provided in this paragraph, the quarterly reports required by paragraph (b)(1) of this section shall be filed in the same format as, and in conformance with, the filing procedures for the annual reports required by paragraph (a) of this section.

(i) Carriers filing quarterly reports shall include in those reports only their provision of switched, facilities-based telephone service and switched, private-line resale telephone service.

(ii) The quarterly reports required by paragraph (b)(1) of this section shall be filed with the Commission no later than April 30 for the prior January through March quarter; no later than July 31 for the prior April through June quarter; no later than October 31 for the prior July through September quarter; and no later than January 31 for the prior October through December period.

(c) *Quarterly Traffic Reports for resale carriers.* Each common carrier engaged in the resale of international switched services that is affiliated with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not required to file reports pursuant to this paragraph.

(d) *Circuit status reports.* Each facilities-based carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and off-shore U.S. points and any country or point

outside that area shall file a circuit status report with the Commission not later than May 1, each year showing the status of its circuits used to provide international services as of December 31, of the preceding calendar year.

(e) *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.

(f) *Definitions.* (1) Two entities are *affiliated* with each other if one of them, or any entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one. Also, a U.S. carrier is *affiliated* with two or more foreign carriers if the foreign carriers, or entities that control them, together directly or indirectly own more than 25 percent of the capital stock of, or control, the U.S. carrier and those foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

(2) *Facilities-based carrier* means a carrier that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable or a satellite system.

(3) *Foreign carrier* is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

#### § 43.82 [Removed]

6. Remove § 43.82.

### 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

7. 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.

#### § 63.23 [Amended]

8. Section 63.23 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

[FR Doc. 04-10837 Filed 5-24-04; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AT64

#### Endangered Species Act Incidental Take Permit Revocation Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to amend part 17 of title 50 of the Code of Federal Regulations (CFR) to add regulations that describe circumstances in which the Service may revoke incidental take permits issued under the authority of the Endangered Species Act (ESA). On December 11, 2003, the U.S. District Court for the District of Columbia in *Spirit of the Sage Council v. Norton*, Civil Action No. 98-1873 (D. D.C.), invalidated 50 CFR 17.22(b)(8) and 17.32(b)(8), the regulations addressing Service authority to revoke incidental take permits under certain circumstances. The court ruled that we had adopted these regulations without adequately complying with the public notice and comment procedures required by the Administrative Procedure Act (APA) and remanded the regulations to us for further proceedings consistent with the APA. In the Rules and Regulations section of today's **Federal Register** is a final rule withdrawing the permit revocations regulations in 50 CFR 17 vacated by the court order. In this document, we are requesting public comments on our proposal to reestablish the permit revocation regulations vacated by the court.

**DATES:** Comments must be received by July 26, 2004.

**ADDRESSES:** You may submit comments, identified by RIN number 1018-AT64, by any of the following methods: (1)