

(b) All systems of less than 2.5 MHz emission bandwidth shall start searching for an available spectrum window within 3 MHz of the band edge at 2390 or 2400 MHz while systems of more than 2.5 MHz emission bandwidth will first occupy the center half of the band. Devices with an emission bandwidth of less than 1.0 MHz may not occupy the center half of the sub-band if other spectrum is available.

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BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 96-45; FCC 03-13]

#### Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service (Joint Board) regarding the definition of services supported by universal service. In its *Recommended Decision*, the Joint Board generally recommended that the Commission not modify the existing list of services supported by universal service. The Joint Board was unable to reach agreement, however, on whether equal access to interexchange service (equal access) satisfies the statutory criteria contained in the Communications Act of 1934, as amended, and should be added to the list of supported services. The Commission seeks comment regarding the Joint Board's recommendations and positions.

**DATES:** Comments are due on or before April 14, 2003. Reply comments are due on or before April 28, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Suite TW-A325, Marlene H. Dortch, Office of the Secretary, Washington, DC, 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Katherine Tofigh, Attorney or Diane Law Hsu, Deputy Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in CC Docket No.

96-45 released on February 25, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

#### I. Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service (Joint Board) regarding the definition of services supported by universal service. A copy of the *Recommended Decision* can be found at 17 FCC Rcd 14095 (Wir. Com. Bur. rel. Jul. 10, 2002). In its *Recommended Decision*, the Joint Board generally recommended that the Commission not modify the existing list of services supported by universal service. The Joint Board was unable to reach agreement, however, on whether equal access to interexchange service (equal access) satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended (the Act), and should be added to the list of supported services. We seek comment regarding the Joint Board's recommendations and positions.

#### II. Procedural Issues

##### A. Ex Parte Presentations

2. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, as long as they are disclosed as provided in the Commission's rules.

##### B. Initial Paperwork Reduction Act Analysis

3. This NPRM may modify an information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due May 12, 2003. 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.

##### C. Initial Regulatory Flexibility Analysis

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

##### D. Need for and Objectives of the Proposed Rules

5. Pursuant to section 254(c) of the Act, the Joint Board on Universal Service may periodically make recommendations to modify the list of supported services, in order to take account for advances in telecommunications and information technologies and services. On December 21, 2000, the Commission requested the Joint Board to review the definition of universal service and make recommendations regarding whether modifications to the definition are warranted. The Joint Board subsequently released a public notice seeking comment on the services, if any, that should be added to or removed from the list of core services. On July 10, 2002, the Joint Board released its recommendations regarding the list of services supported by universal service. The NPRM seeks comment on the Joint Board's recommendations.

##### 1. Legal Basis

6. The legal basis as proposed for this NPRM is contained in §§ 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended.

##### 2. Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply

7. 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 modifications to the definition of universal services. To

estimate the number of small entities that could be affected by these proposed modifications to the Commission's rules, we first consider the statutory definition of "small entity" under the RFA. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "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).

8. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Trends in Telephone Service* report. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

10. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the "Census Bureau") reports that, at the end of 1997, there were 6,239 firms engaged in providing telephone services, as defined therein. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and

resellers. It seems certain that some of those 6,239 telephone service firms may not qualify as small entities because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude, therefore, that 6,239 or fewer telephone service firms are small entity telephone service firms that may be affected by the decisions proposed in this NPRM.

11. *Local Exchange Carriers and Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data there are 1,619 local services providers with 1,500 or fewer employees. Because it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Of the 1,619 local service providers, 1,024 are incumbent local exchange carriers, 411 are Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), 131 are resellers and 53 are other local exchange carriers. Consequently, we estimate that fewer than 1,619 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected.

12. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data regarding the number of these carriers nationwide of which we are aware appears, there are 181 IXCs with 1,500 or fewer employees. Because it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small

business concerns under SBA's definition. Consequently, we estimate that there are fewer than 181 small entity IXCs that may be affected by the proposals in the NPRM.

13. *Operator Service Providers, Prepaid Calling Card Providers, Satellite Service Carriers, Toll Resellers, Other Toll Carriers, and Payphone Providers.* Neither the Commission nor SBA has developed a definition particular to operator service providers (OSPs), prepaid calling card providers, satellite service carriers, toll resellers, other toll carriers, or payphone providers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually on the Form 499-A. According to our most recent data, there are 20 OSPs, 31 prepaid calling card providers, 25 satellite service carriers, 538 toll resellers, 37 other toll carriers, and 933 payphone providers that have 1,500 or fewer employees. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 20 OSPs, 31 prepaid calling card providers, 25 satellite service carriers, 538 toll resellers, 37 other toll carriers, and 933 payphone providers may be affected by the decisions and rules adopted in this NPRM.

14. *Cellular and Wireless Telephony.* Neither the Commission nor the SBA has developed a definition of small entities specifically for wireless telephony. The closest definition is the SBA definition for cellular and other wireless telecommunications. Under this definition, a cellular licensee is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data, 858 providers classified themselves as providers of wireless telephony, including cellular telecommunications, Personal Communications Service, and Specialized Mobile Radio (SMR) Telephony Carriers. 291 providers report having 1,500 or fewer employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns

under the SBA's definition. Consequently, we estimate that there are fewer than 291 wireless telephony carriers that may be affected.

15. *Other Wireless Services.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to wireless services other than wireless telephony. The closest applicable definition under the SBA rules is again that of cellular and other wireless telecommunications, under which a service provider is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data, 884 providers with 1,500 or fewer employees classified themselves as paging services, SMR dispatch, wireless data carriers, or other mobile service providers. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 884 wireless service providers that may be affected.

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

16. Should the Commission decide to revise the definition of universal service, the associated rule changes could modify the reporting and recordkeeping requirements of some telecommunications service providers regulated under the Communications Act.

17. Section 254(e) states that only eligible telecommunications carriers (ETCs) designated pursuant to section 214(e) shall be eligible to receive Federal universal service support. In order to be designated an ETC, a carrier must throughout its service area "offer the services that are supported by Federal universal service support mechanisms under section 254(c)." Carriers generally apply to their state commission for designation as carriers eligible to receive universal service support, but seek designation from the Commission if they are not subject to the jurisdiction of the state commission. If the definition of supported services is modified, service providers may be required to verify to either the state or Commission that any services added to the definition of universal service are offered throughout their service areas and that they advertise the availability of such services. Entities, especially small businesses, are encouraged to quantify the cost of compliance for

reporting possible additions to the list of supported services.

18. In addition, ETCs may only use support "for the provision, maintenance, and upgrading of facilities and services" for supported services. Pursuant to this rule, state regulatory commissions provide the Commission with annual certifications indicating that ETCs in their states receiving federal universal service support will use the support only for its intended purposes. Carriers not subject to the jurisdiction of the state must submit a sworn affidavit to the Commission stating that they will use the support only for its intended purposes. Entities, especially small businesses, are encouraged to quantify the cost of compliance for certifying possible additions to the list of supported services.

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

19. 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.

20. As discussed previously, this NPRM seeks comment on the Joint Board's recommendations regarding the definition of universal service. The Joint Board determined that the current list of core services continue to satisfy the criteria outlined in section 254(c) and recommended that the Commission retain the existing services. For most of the additional services under consideration, the Joint Board recommended that the Commission not expand the existing definition of services that are supported by federal universal service. The Joint Board, however, was unable to reach agreement on whether equal access satisfies the statutory criteria contained in section 254(c) of the Act.

21. Should the definition of universal service be modified, we seek comment on how to reduce the administrative burden and cost of compliance for small telecommunications service providers with respect to each of the proposals. We particularly seek comment from

carriers that are "small business concerns" under the Small Business Act.

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

22. None.

### E. Comment Filing Procedures

23. We invite comment on the issues and questions set forth in the Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 14, 2003; and reply comments on or before April 28, 2003. All filings should refer to CC Docket No. 96-45. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

24. Comments filed through ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is CC Docket No. 96-45. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: get form <your e-mail address>. A sample form and directions will be sent in reply.

25. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Parties who choose to file by paper are hereby notified that effective December 18, 2001, the Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings for

the Commission's Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW., Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method. . .	It should be addressed for delivery to. . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m.).
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554

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

26. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name,

proceeding (including the docket number, in this case, CC Docket No. 96-45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

27. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. In addition, the full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

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

#### F. Further Information

29. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This NPRM can also be downloaded in Microsoft Word and ASCII formats at

[http://www.fcc.gov/ccb/universal\\_service/highcost](http://www.fcc.gov/ccb/universal_service/highcost).

### III. Ordering Clauses

30. Accordingly, it is ordered that, pursuant to the authority contained in sections 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, this Notice of Proposed Rulemaking is adopted.

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

#### List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 03-6092 Filed 3-12-03; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 03-600, Docket No. 02-122, RM-10444]

#### Radio Broadcasting Services; Lone Pine, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule, dismissal.

**SUMMARY:** This document dismisses a pending petition for rulemaking to add an FM allotment in Lone Pine, California. The Audio Division had requested comment on a petition filed by Virgil Todd, proposing the allotment of Channel 249A at Lone Pine, California. See 67 FR 41364, June 18, 2002. The Audio Division required petitioner to include, with his comments, verification that the statements contained in the petition are accurate to the best of his knowledge. Petitioner did not file comments supporting the requested allotment. This document dismisses the petition for failure to demonstrate a continuing interest in the requested allotment and for failure to supply the verification required by Section 1.52 of the Commission's rules. See 47 CFR 1.52. The document therefore terminates the proceeding.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.