published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

B. Is This Rule Subject to Executive Order 13211?

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866 (See discussion of Executive Order 12866 above.)

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 14, 2004.

Thomas P. Dunne,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
IN	Jacobsville Neighborhood Soil Contamination	Evansville	
*	*	*	*
MO	Annapolis Lead Mine	Annapolis	
*	*	*	*
MS	Picayune Wood Treating	Picayune	
*	*	*	*
NM	Grants Chlorinated Solvents Plume	Grants	
*	*	*	*
NY	Diaz Chemical Corporation	Holley	
*	*	*	*
NY	Peninsula Boulevard Ground Water Plume	Hewlett	
*	*	*	*
PA	Ryeland Road Arsenic	Heidelberg Township	
*	*	*	*
PR	Cidra Ground Water Contamination	Cidra	
*	*	*	*
VT	Pike Hill Copper Mine	Corinth	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C = Sites on Construction Completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

* * * * *

[FR Doc. 04–16571 Filed 7–21–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–338; FCC 04–164]

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On August 21, 2003, the Commission initiated a Further Notice of Proposed Rulemaking to determine whether it should change its interpretation of section 252(i) of the Communications Act of 1934, as amended (the Act), as implemented by § 51.809 of the Commission's rules (the ''pick-and-choose'' rule). In this Order, the Commission replaces the current

pick-and-choose rule with an ''all-or-nothing rule'' that requires a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement. The Commission determines in this Order that the pick-and-choose rule is a disincentive to give and take in interconnection negotiations. In addition, the Commission finds that other provisions of the Act provide adequate protection for requesting carriers from discrimination.

DATES: Effective August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1686, or at *christi.shewman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order* (Order) in CC Docket No. 01–338, FCC 04–164, adopted July 8, 2004, and released July 13, 2004. The complete text of this Order is available for inspection and copying during normal business hours in 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, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Order

1. *Background.* Section 252(i) of the Act provides that a ''local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting carrier upon the same terms and conditions as those provided in the agreement.'' In the Local Competition Order (61 FR 45476, August 29, 1996), the Commission interpreted section 252(i) to mean that requesting carriers can choose among individual provisions contained in publicly filed interconnection agreements without being required to accept the terms and conditions of the entire agreement.

2. On review, the U.S. Court of Appeals for the Eighth Circuit (the Eighth Circuit) vacated the pick-and-choose rule stating that the Commission's interpretation did not balance the competing policies of sections 251 and 252, and that the rule hindered voluntarily negotiated agreements. The Supreme Court reversed the Eighth Circuit decision and reinstated the pick-and-choose rule, holding that the Commission's interpretation of section 252(i) was reasonable.

3. On May 25, 2001, Mpower filed a petition for forbearance and rulemaking to establish a ''New Flexible Contract Mechanism Not Subject to 'Pick and Choose,' '' and sought relief from the Commission's pick-and-choose requirement on the grounds that it inhibited innovative deal-making during negotiations. Although Mpower subsequently withdrew this petition, incumbent LECs have argued that abandoning the rule would promote mutually beneficial commercial business relationships between incumbent local exchange carriers (LECs) and competitive LECs.

4. On August 21, 2003, the Commission initiated the Further Notice of Proposed Rulemaking (FNPRM) (68 FR 52307, September 2, 2003) to determine whether it should eliminate the pick-and-choose rule and replace it with an alternative interpretation of section 252(i). The Commission requested comment on three tentative conclusions: that the Commission has legal authority to alter its interpretation of section 252(i), so long as the new rule remains a reasonable interpretation of the statutory text; that the current rule discourages give-and-take bargaining; and that the Commission should reinterpret section 252(i) so that if an incumbent LEC files for and obtains state approval for a statement of generally available terms (SGAT), the current pick-and-choose rule would apply only to that SGAT, and all other interconnection agreements would be subject to an all-or-nothing rule requiring carriers to adopt another carrier's interconnection agreement in its entirety (the conditional SGAT proposal).

5. *Discussion.* In the Order, the Commission adopts the tentative conclusion from the FNPRM that it has the legal authority to reinterpret section 252(i), and that the language in section 252(i) does not limit the Commission to a single construction. The Commission reached this conclusion based on the plain meaning of the section's text giving rise to two different, reasonable interpretations, and because the Supreme Court expressly recognized, in Iowa Utilities Board v. FCC, that the Commission has the expertise to determine a reasonable interpretation of section 252(i). The Supreme Court, however, did not hold that the Commission's current interpretation of section 252(i) is compelled by the statute. Had it done so, the Court would not have had to reach the question of whether the Commission's interpretation is reasonable, nor would it have acknowledged that the ability to interpret section 252(i) is a matter ''eminently within the expertise'' of the Commission, and would have necessarily foreclosed our ability to make any other interpretation. The Supreme Court has routinely recognized that government agencies have discretion to change interpretations of ambiguous statutes, and that an agency is not estopped from changing its view.

6. The Commission concludes that the burdens of the current pick-and-choose rule outweigh its benefits, and that the existing pick-and-choose rule fails to promote the meaningful, give-and-take negotiations envisioned by the Act. The Commission finds that the current pick-and-choose rule is not compelled by section 252(i) and an all-or-nothing approach better achieves statutory goals. Therefore, the Commission eliminates the pick-and-choose rule and replaces it with an all-or-nothing rule, requiring that a carrier that seeks to adopt terms and conditions under section 252(i) may only adopt an effective interconnection agreement in its entirety, taking all rates, terms, and conditions of the adopted agreement. In the Order, the Commission declines to adopt the FNPRM's conditional SGAT proposal. The Commission also clarifies that in order to facilitate compromise, the new all-or-nothing rule will apply to all effective interconnection agreements, including those approved and in effect before the date the new rule goes into effect. As of the effective date of the new rule, the pick-and-choose rule will no longer apply to any interconnection agreement.

7. *''All or Nothing'' Rule.* Based on the record of evidence in the Order, the Commission finds the pick-and-choose rule is a disincentive to give and take in interconnection negotiations by ''making it impossible for favorable interconnection-service or network-element terms to be traded off against unrelated provisions.'' The Commission concludes that the all-or-nothing approach is a reasonable interpretation of section 252(i) that will provide incentives to negotiate while continuing to provide safeguards against discrimination. The pick-and-choose rule has resulted in the adoption of largely standardized agreements with little compromise between the incumbent LEC and the requesting carrier. Incumbent LECs persuasively demonstrate that they seldom make

significant concessions in return for some trade-off for fear that third parties will obtain the equivalent benefits without making any trade-off at all. In addition, the record demonstrates that the pick-and-choose rule imposes material costs and delay on both parties and serves as a regulatory obstacle to mutually beneficial transactions. The Commission finds that the record evidence supports its conclusion that an all-or-nothing rule would better serve the goals of sections 251 and 252 to promote negotiated interconnection agreements because it would encourage incumbent LECs to make trade-offs in negotiations that they are reluctant to accept under the existing rule.

8. Incumbent LEC commenters show that, when there are proposed trade-offs that would be beneficial to their interests, they expend significant resources conferring internally to assess the risks of the pick-and-choose rule and to attempt to craft language that adequately limits the risk that a requesting carrier would be able to adopt a provision without associated trade-offs. Moreover, incumbent LECs submitted evidence showing that that the pick-and-choose rule deters them from testing and implementing mutually beneficial innovative business arrangements through interconnection agreements. Based on the record, the Commission determines that the pick-and-choose rule undermines negotiations by unreasonably constraining incentives to bargain during negotiations.

9. The Commission rejects arguments that incumbent LECs will have no incentive to bargain fairly with requesting carriers without the pick-and-choose rule, and that more negotiations will end inevitably in costly and burdensome arbitrations. The Commission finds that any hypothetical disadvantage in negotiating leverage is outweighed by the potential creativity in negotiation that an all-or-nothing rule would help promote. Under the new rule, requesting carriers should be able to negotiate individually tailored interconnection agreements designed to fit their business needs more precisely. Requesting carriers with limited resources will have the option of adopting a suitable agreement in its entirety if they decline to pursue negotiated interconnection agreements. The Commission recognizes that while the potential costs of arbitrations are not insignificant, the benefits of an all-or-nothing approach outweigh these transaction costs. Indeed, the arbitration process created in the Act is often invoked under the current pick-and-choose rule and will remain as a competitive safeguard for all parties.

10. Based on the record, Commission concludes that the pick-and-choose rule has not expedited the competitive entry process, as the Commission expected, and that an all-or-nothing rule would be beneficial because competitive LECs that are sensitive to delay could adopt whole agreements, while others could reach agreements on individually tailored provisions more efficiently. The Commission states that disputes over obligations under the pick-and-choose rule have become a significant obstacle to efficient negotiations of interconnection between incumbent LECs and requesting carriers. The Commission finds that the ''legitimately related'' requirement has become an obstacle to give-and-take negotiations rather than an incentive for give and take. Additionally, the record demonstrates that attempts by requesting carriers to pick and choose often devolve into protracted disputes with accusations of anticompetitive motives on both sides. As a result, negotiations are delayed, incumbent LECs are reluctant to engage in give-and-take negotiations even where terms might be legitimately related for fear of having to defend against unreasonable pick-and-choose requests, and requesting carriers are denied the benefits of individualized agreements that meet their business needs. The Commission concludes that the pick-and-choose rule has proven to be difficult to administer in practice and has impeded productive give-and-take negotiations as intended by the Act. The Commission expects the all-or-nothing rule to produce fewer disputes over implementation because compliance will be more easily identifiable and administrable, and will provide increased incentive for incumbent LECs to grant concessions in return for trade-offs in the normal course of negotiations.

11. *Protections Against Discrimination.* The Order concludes that existing state and federal safeguards against discriminatory behavior are sufficient and that any additional protection that the current pick-and-choose rule may provide is unnecessary. The current record demonstrates that in practice competitive LECs frequently adopt agreements in their entirety. The Commission believes that this practice indicates that the pick-and-choose protections against discrimination are superfluous and that the pick-and-choose rule does not afford requesting carriers protections against discrimination beyond those that would be in place under the all-or-nothing rule. The pick-and-choose rule does not provide added protection against discrimination but serves a disincentive to negotiations. Under an all-or-nothing rule, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.

12. Section 251(c) requires incumbent LECs to provide interconnection, unbundled network elements, telecommunications services for resale, and collocation on nondiscriminatory terms and conditions. If negotiations reach an impasse, either party may petition for arbitration by the state commission. Section 252 imposes deadlines for approvals and arbitrations that ensure that interconnection agreements are finalized in a timely manner. Section 252(e)(1) requires carriers to file any negotiated or arbitrated interconnection agreement with the relevant state commission for approval. Under section 252(e)(2)(A)(i), state commissions may reject a negotiated agreement if ''the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement. * * *'' Following a state commission determination, any party may bring an action in an appropriate federal district court to determine whether the agreement meets the requirements of sections 251 and 252. In addition, requesting carriers seeking remedies for alleged violations of section 252(i) may file complaints pursuant to section 208. Given the statutory nondiscrimination provisions and the procedural mechanisms to ensure compliance with the Act's nondiscrimination requirements at both the state and federal levels, the Commission concludes that the Act provides requesting carriers with adequate protections against discrimination without the pick-and-choose rule.

13. The Commission rejects commenters' arguments that under an all-or-nothing rule, incumbent LECs will insert onerous terms or ''poison pills'' into agreements to discourage competitive LECs from adopting

agreements in whole. They argue that to avoid such onerous terms, requesting carriers will be forced into lengthy and expensive negotiations and ultimately, arbitration. The Commission states above that the Act provides adequate protection against discrimination, including poison pills, under an all-or-nothing rule, and that the record does not demonstrate that concerns with regard to poison pills have materialized over the eight years of experience with negotiated interconnection agreements. Additionally, the Commission is not persuaded that the pick-and-choose rule must be retained at a minimum for interconnection agreements between incumbent LECs and their affiliates (including wireless and section 272 separate affiliates) due to a higher risk of discrimination by incumbent LECs in favor of affiliates. The Commission states that the Act's nondiscrimination provisions discussed in the Order apply to incumbent LECs' interconnection agreements with affiliates.

14. The Commission concludes that the benefits of the pick-and-choose rule, in terms of protection against discrimination, do not outweigh the significant disincentive it creates to negotiated interconnection agreements. The Commission recognizes that requesting carriers will be protected against discrimination under the all-or-nothing rule and other statutory provisions, and therefore, eliminates the pick-and-choose rule and replaces it with the all-or-nothing rule.

15. *The Proposed SGAT Condition.* The Commission declines to adopt the tentative conclusion that the current pick-and-choose rule would continue to apply to all approved interconnection agreements if the incumbent LEC does not file and obtain state approval for an SGAT. The record of this proceeding reflects widespread opposition to the proposed SGAT condition. Incumbent LECs, competitive LECs, wireless carriers, and state commissions generally agree that there are significant legal and practical concerns with this proposal and that an SGAT condition would not afford competitors additional protection from discrimination.

16. Based on the record, the Commission agrees with opponents to this proposal and finds that an SGAT condition would impose significant burdens on incumbent LECs, requesting carriers, and state commissions that outweigh any benefit in the form of additional protection against discrimination. Specifically, the SGAT condition would impose costs and administrative burdens on incumbent LECs to file SGATs in states currently without SGATs; on requesting carriers to participate in state SGAT proceedings; and on state commissions to conduct proceedings to review and approve the SGATs. At the same time, the Commission recognizes that section 252 does not require state review before SGATs take effect; nor does it require timely updates. As described in the Order, the Commission concludes that the existing safeguards against discrimination, including the section 252(e)(1) filing requirement and state commission approval, afford competitors adequate protection under an all-or-nothing rule. Moreover, if the SGAT condition were needed to protect against discrimination, the fact that the SGAT provision of the Act does not apply to non-BOC incumbent LECs would limit the Commission's ability to impose a uniform rule.

Final Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FNPRM. The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. No comments were received on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

18. *Need for, and Objectives of, the Rule:* This Order ensures that market-based incentives exist for incumbent and competitive LECs to negotiate innovative commercial interconnection arrangements. The current pick-and-choose rule implementing section 252(i) may discourage give-and-take negotiation because incumbent LECs may be reluctant to make significant concessions (in exchange for negotiated benefit) if those concessions become automatically available—without any trade-off—to every potential market entrant. The Commission adopts an alternative approach to implementing section 252(i), requiring third parties to opt into entire agreements, to promote more innovative and flexible arrangements between parties. This Order declines to adopt the approach proposed in the FNPRM that would eliminate the current pick-and-choose regime for incumbent LECs only where the incumbent LEC has filed and received state approval of an SGAT. Instead, this Order eliminates the pick-and-choose rule and replaces it with an all-or-nothing rule, regardless of whether the state has an effective SGAT.

19. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA:* There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities.

20. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Would 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 rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

21. In this section, the Commission further describes and estimates the number of small entity licensees and regulates that may be affected by rules adopted in this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, the Commission discusses the total estimated numbers of small businesses that might be affected by these actions.

22. Small incumbent local exchange carriers are included 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. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although they emphasize that this RFA action has no effect on Commission

analyses and determinations in other, non-RFA contexts.

23. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

24. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

25. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1.500 or fewer employees. In addition, 35 carriers have reported that they are ''Other Local Service Providers.'' Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

26. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

27. *Operator Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

28. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

29. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, OSPs, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the rules and policies adopted herein.

30. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

31. *Broadband PCS.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been

approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 305, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

32. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

33. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

34. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

35. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

36. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

37. In the *Paging Second Report and Order,* the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 608 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Of these, an estimated 589 are small, under the SBA-approved small business size standard, and the majority of common carrier paging providers would qualify as small entities under the SBA definition.

38. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

39. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the BETRS. The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

40. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

41. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

42. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. The Commission noted, however, that the common carrier microwave fixed licensee category includes some large entities.

43. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (UHF) television broadcast channels that are not used for television broadcasting in the coastal

areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

44. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

45. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies proposed herein.

46. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.

47. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

48. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission tentatively concludes that at least 1,932 ITFS licensees are small businesses.

49. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small winning businesses that won 119 licenses.

50. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years. The SBA has approved of these definitions. At this time, the Commission cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, the Commission assumes for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

51. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA

small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GH_z band that were relocated from the 18 GH_z band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GH_z band is a small business entity.

52. *Future 24 GH_z* Licensees. With respect to new applicants in the 24 GH_z band, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million. ''Very small business'' in the 24 GH_z band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

53. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999. Thus, under this size standard, the great majority of firms can be considered small entities.

54. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities:* In this Order, the Commission eliminates the current pick-and-choose rule. The changes will restrict competitive LECs' choices to opt into specific terms and conditions of existing interconnection agreements, requiring competitors to opt into entire agreements or negotiate their own agreements with incumbents. The Commission does not expect the new rule to impose additional burdens beyond those under the existing rule.

55. *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 developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

56. In this Order, the Commission amends the pick-and-choose rule in a manner that encourages more customized contracts between competitive and incumbent LECs, as envisioned by the Act. The Order seeks to remove disincentives to the ability of incumbent LECs and competitive LECs to negotiate more customized agreements, including agreements that may include significant concessions in exchange for negotiated benefits. Changing the current rules, in favor of an approach where competitive LECs—including small entities—must opt into entire agreements, rather than individual terms and conditions, may impose additional burdens on these parties than they currently bear. The Commission finds that the current rules, however, expose incumbent LECs to the risk that subsequent entrants may reap a one-sided benefit from negotiated concessions made between the incumbent LEC and the actual contracting competitive LEC, and this creates a disincentive to negotiation to both negotiating parties. This may, in turn, impose additional burdens on competitors and incumbents as the parties attempt to reach agreements and resolve disputes, often through arbitration and litigation, in a regulatory environment that creates disincentives for either party to compromise. For this reason, the Commission does not establish a separate pick-and-choose regime to govern small business incumbents or competitors. The Commission believes the alternative adopted in this Order will serve the Commission's goal of encouraging negotiation while protecting the rights and interests of competitors, including small businesses. The Commission believes that this approach is the least burdensome way to achieve market-driven contract negotiations. Alternatives proposed to address small business concerns were not adopted because they do not accomplish the Commission's objectives in this proceeding.

57. *Report to Congress:* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Final Paperwork Reduction Act Analysis

58. This Order does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

Ordering Clauses

59. Accordingly, IT IS ORDERED that pursuant to sections 1, 3, 4, 252(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 252(i), 303(r), the Second Report and Order in CC Docket No. 01–338 IS ADOPTED, and that part 51 of the Commission's rules, 47 CFR part 51, is amended as set forth in Appendix B of the Order. The requirements of this Order shall become effective August 23, 2004.

60. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this ORDER, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Interconnection, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 51 as follows:

PART 51—INTERCONNECTION

■ 1. The authority citation for part 53 continues to read as follows:

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

■ 2. Revise § 51.809 to read as follows:

§ 51.809 Availability of agreements to other telecommunications carriers under section 252(i) of the Act.

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement.

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

(1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

(2) The provision of a particular agreement to the requesting carrier is not technically feasible.

(c) Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.

[FR Doc. 04–16728 Filed 7–21–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 03–249]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules for modifying the high-cost universal service support mechanism for non-rural carriers and adopting measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers that contained information collection requirements.

DATES: Sections 54.316(a) and 54.316(c) published at 68 FR 69622, December 15, 2003, were approved by the Office of Management and Budget (OMB) and became effective on June 7, 2004. The OMB approval of the information collection requirements contained in these rules was announced in the **Federal Register** on June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Theodore Burmeister, Attorney, or Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: On October 27, 2003, the Commission released an Order on Remand and Memorandum Opinion and Order in CC Docket No. 96–45 (Order). In this document, in response to the decision of the United States Court of Appeals for the Tenth Circuit and the recommendations of the Federal-State Joint Board on Universal Service, the Commission modified the high-cost universal service support mechanism for non-rural carriers and adopts measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers. A summary of the Order was published in the **Federal Register**. See 68 FR 69622, December 15, 2003. In that summary, the Commission stated that the modified rules would become effective 30 days after publication in the **Federal Register** except for § 54.316(a) and § 54.316(c) which would become effective upon approval by OMB of the associated information collection requirements. The rule amendments other than § 54.316(a) and § 54.316(c) became effective on January 14, 2004. On June 7, 2004, OMB approved the information collections associated with § 54.316(a) and § 54.316(c), and those sections, pursuant to the Order, became effective. See OMB No. 3060–0894. The OMB approval of the information collection requirements was announced in the **Federal Register** on June 24, 2004. See 69 FR 35345.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–16740 Filed 7–21–04; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 04–154; MM Docket No. 90–66]

Radio Broadcasting Services; Lincoln, Osage Beach, Steelville, and Warsaw, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration, dismissed.

SUMMARY: The Commission dismissed a petition for reconsideration filed by Twenty-One Sound Communications, licensee of Station KNSX(FM), Steelville, Missouri, of a decision, denying its application for review and its petition to upgrade the class of the Steelville station. Since Twenty-One Sound's arguments were fully considered in the prior decision, reconsideration was not warranted. *See* 67 FR 17014 (April 9, 2002).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 90–66, adopted June 30, 2004, and released July 8, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because this proposed rule was denied or dismissed.)

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–16735 Filed 7–21–04; 8:45 am]

BILLING CODE 6712–01–P