FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 97–142, FCC 97–195]

Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Order and Notice of Proposed Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On June 4, 1997, the Federal Communications Commission (Commission) released a Notice of Proposed Rulemaking (NPRM) that proposes changes to the effective competitive opportunities (ECO) test and related rules adopted in the *Foreign Carrier Entry Order,* 60 FR 67332 (December 29, 1995). The NPRM also proposes conforming changes to the Commission's framework for permitting flexible settlement arrangements between U.S. and foreign carriers. The Commission believes that it is time to revisit its rules in light of an agreement by the United States and 68 other countries negotiated under the auspices of the World Trade Organization (WTO) to open markets for basic telecommunications services.

DATES: Comments are due on or before July 9, 1997, and reply comments are due on or before August 12, 1997. Written comments by the public on the proposed and/or modified information collections are due August 18, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Doug Klein, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–0424; Susan O'Connell, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1484. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. On June 4, 1997, the Commission released a Notice of Proposed Rulemaking in Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97–142 (FCC 97–195) (NPRM) that proposes changes to the rules and policies governing foreign participation in the U.S. market for basic telecommunications services. These rules and policies were adopted by the Commission in the *Foreign Carrier Entry* proceeding, 60 FR 67332 (December 29, 1995). The NPRM also proposes changes to the Commission's framework for permitting flexible settlement arrangements between U.S. and foreign carriers.

2. The NPRM proposes rules that the Commission believes would be more appropriate in the liberalized competitive environment that will exist when the recent World Trade Organization (WTO) agreement on basic telecommunications services takes effect on January 1, 1998. The WTO agreement was concluded on February 15, 1997, when 69 countries, including the United States and virtually all of its major trading partners, agreed to open their markets for basic telecommunications services to competition from foreign carriers. This agreement covers 95 percent of the global market for basic telecommunications services. Sixty-five of these countries, including the United States, have committed to enforce fair rules of competition for basic telecommunications services that are modeled on U.S. law and regulations. Fifty-two of these countries, which account for approximately 90 percent of telecommunications revenues in WTO Member countries, have granted market access for international services. Thus, most of the world's major trading nations have made binding commitments to transition rapidly from monopoly provision of basic telecommunications services to open entry and procompetitive regulation of these services. Due to these changed circumstances, the Commission believes that it is time to revisit its rules governing foreign participation in the U.S. telecommunications market. The Commission seeks comments on a number of tentative conclusions and proposals.

3. The NPRM tentatively concludes that it is no longer necessary to apply an ''effective competitive opportunities'' (ECO) analysis to Section 214 applications filed by carriers from WTO Member countries that seek to provide U.S. international services. The NPRM proposes to afford streamlined processing to these applications. The NPRM also proposes to adopt measures to improve the Commission's ability to detect, deter and remedy anticompetitive conduct by foreign carriers that have market power in particular destination countries.

4. The NPRM also tentatively concludes that it is no longer necessary to apply an equivalency analysis as the basis for authorizing all U.S. carriers to provide switched services over resold or facilities-based private lines between the United States and WTO Member countries. In addition, the NPRM tentatively concludes that it is no longer necessary to apply an ECO test for cable landing licenses for cables between the United States and other WTO Member countries. The NPRM also tentatively concludes that the Commission should eliminate the ECO test as part of its § 310(b)(4) public interest analysis of Title III applications for common carrier radio licenses filed by carriers with indirect foreign ownership from WTO Member countries.

5. The NPRM tentatively concludes that the Commission should retain the existing ECO test for Section 214, Title III common carrier, and cable landing license applications from entities from non-WTO Member countries. The NPRM proposes that the Commission deny Section 214, Title III common carrier, and cable landing license applications from entities from WTO Member countries if a grant of the application would pose a very high risk to competition in the U.S. telecommunications market that could not be addressed by conditions that we could impose on the authorization.

6. The NPRM tentatively concludes that, if the Commission eliminates the ECO test for Section 214 purposes, it should also eliminate the test as the basis for permitting U.S. carriers to negotiate alternative settlement arrangements with carriers from WTO Member countries. The NPRM proposes to adopt a presumption in favor of permitting flexibility for carriers from WTO Member countries. The NPRM proposes that this presumption may be rebutted by a showing that market conditions in the country in question are not sufficient to prevent a carrier with market power in that country from discriminating against U.S. carriers. The NPRM also proposes to continue to apply the ECO test as the threshold standard for permitting flexibility with carriers that are from countries that are *not* WTO Members.

7. The NPRM proposes changes to the Commission's regulation of U.S. carriers classified as dominant on particular U.S. international routes due to an affiliation with a foreign carrier that has market power in the destination country. The NPRM proposes to adopt dominant carrier safeguards that would apply to dominant foreign-affiliated carriers depending on the risk of competitive harm the carrier poses. The basic dominant carrier regulations would consist of a minimal set of safeguards that would apply to U.S.

carriers affiliated with foreign carriers that have market power in a destination country that has eliminated legal barriers to international facilities-based entry and authorized multiple international facilities-based carriers. The supplemental safeguards provide for greater oversight of carrier conduct and would apply to foreign carriers with market power that cannot meet this standard.

8. The proposed basic dominant carrier safeguards would require such carriers to notify the Commission quarterly of the addition of circuits on the dominant route, specifying the joint owner of the circuit. Such carriers would also be required to file with the Commission quarterly traffic and revenue reports for the dominant route. They would also be required to maintain complete records of the provisioning and maintenance of basic network facilities and services they procure from the foreign carrier affiliate. The NPRM also seeks comment on whether the Commission should require some level of structural separation between such carriers and their affiliated foreign carriers.

9. The Commission proposed that carriers subject to supplemental dominant carrier regulation on particular routes would be required to obtain Section 214 approval to add circuits on the affiliated route. These carriers would also be required to file quarterly circuit status reports for that route with the Commission, which would be made publicly available. In addition, they would be required to file an electronic summary of contracts submitted under § 43.51 of the Commission's rules, 47 CFR 43.51. They would also be required to file quarterly reports summarizing their records on the provisioning and maintenance of basic network facilities and services procured from their affiliated foreign carriers. These U.S. carriers would also be required to comply with stricter limits on certain arrangements for the sharing of information, customers and joint marketing. The basic dominant carrier safeguards would also apply to carriers that are subject to supplemental safeguards, to the extent the basic safeguards do not conflict with them. The NPRM also seeks comment on whether the Commission should require some level of separation between a carrier subject to supplemental dominant carrier regulation and its affiliated foreign carrier. The Commission expresses the belief that it may be appropriate to apply stricter separation requirements to these U.S. carriers than to carriers with foreign affiliates that face competition in their markets. The NPRM proposes to allow all U.S. carriers regulated as dominant due to an affiliation with a foreign carrier to file tariffs on one days' notice and to accord such tariffs a presumption of lawfulness.

10. The NPRM also proposes to delineate the types of arrangements the Commission considers to be prohibited by the § 63.14 ''no special concessions'' rule, which applies generally to arrangements between U.S. and foreign carriers. It additionally proposes to modify the rule to apply only to concessions granted to U.S. carriers by foreign carriers with market power in a destination country, as opposed to all foreign carriers.

11. Finally, the Commission proposes changes to its rules that afford streamlined processing to certain international Section 214 applications.

Initial Regulatory Flexibility Analysis

12. Pursuant to the Regulatory Flexibility Act of 1990, 5 U.S.C. §§ 601–612, the Commission's Initial Regulatory Flexibility Analysis with respect to the NPRM is as follows:

13. *Reason for Action.* The Commission is issuing this Notice of Proposed Rulemaking to seek comment on possible changes to our rules and policies for allowing foreign-affiliated entities to participate in the U.S. telecommunications market. In light of the recent agreement reached by Members of the World Trade Organization to liberalize the provision of basic telecommunications services, we believe it is appropriate to relax our scrutiny of applications filed by affiliates of entities from WTO Member countries for authority pursuant to § 214 of the Communications Act, 47 U.S.C. § 214, and the Cable Landing License Act, 47 U.S.C. §§ 34–39; and to relax our scrutiny of indirect foreign investment in holders of common carrier radio licenses under § 310(b)(4) of the Communications Act, 47 U.S.C. § 310(b)(4). We also believe that other changes to our regulation of foreign-affiliated entities are appropriate in light of the WTO agreement and our experience applying our current rules.

14. *Objectives.* The objective of this proceeding is to increase competition in the U.S. market for basic telecommunications services while minimizing the risk of anticompetitive harm. In light of the changed circumstances that will result from the WTO agreement on basic telecommunications and our nearly two years of experience with our current rules on market entry, we believe that reducing entry barriers for applicants affiliated with entities from WTO Member countries is the appropriate way to accomplish that objective. The Commission believes that the ''effective competitive opportunities'' test developed in its *Foreign Carrier Entry Order* is no longer necessary as applied to countries that are members of the WTO. Instead, we propose to rely primarily on regulatory safeguards and settlement-rate benchmarks to prevent anticompetitive conduct in the U.S. telecommunications marketplace. We propose some revisions to those regulatory safeguards in this Notice.

15. *Legal basis.* This Notice of Proposed Rulemaking is adopted pursuant to §§ 1, 4(i), 201(b), 214, 303(r), 307, 309(a), 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, 303(r), 307, 309(a), 310.

16. *Description, potential impact, and number of small entities affected.* The RFA generally defines *small entity* as having the same meaning as the terms *small business, small organization,* and *small governmental jurisdiction* and defines *small business* as having the same meaning as the term *small business* concern under § 3 of the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities. The Small Business Act defines *small business* concern as 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).

17. The rules proposed in this Notice apply only to entities providing international common carrier services pursuant to Section 214 of the Communications Act; entities providing domestic or international wireless common carrier services under § 309 of the Act; and entities licensed to construct and operate submarine cables under the Cable Landing License Act.

18. Because the small incumbent local exchange carriers (LECs) subject to these rules are either dominant in their fields of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definitions of *small entity* and *small business concern.* Accordingly, our use of the terms *small entities* and *small businesses* does not encompass small incumbent LECs. Out of an abundance of caution, however, for the purposes of this initial regulatory flexibility analysis, we will consider small incumbent LECs to be within this analysis, where a small incumbent LEC is any incumbent LEC that arguably might be defined by the SBA as a ''small business concern.''

19. *Section 214 International Common Carrier Services.* Entities providing international common carrier service pursuant to Section 214 of the Act fall into the SBA's Standard Industrial Classification (SIC) categories for Radiotelephone Communications (SIC 4812) and Telephone Communications, Except Radiotelephone (SIC 4813). The SBA's definition of *small entity* for those categories is one with fewer than 1,500 employees. We discuss below the number of small entities falling within these two subcategories that may be affected by the rules proposed in this Notice.

20. The most reliable source of information regarding the number of international common carriers is the data that we collect annually in connection with the *Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet).* In 1995, 445 toll carriers filed TRS fund worksheets. We believe that between 50 and 200 carriers failed to file TRS fund worksheets. We believe also that fewer than 10 toll carriers had 1,500 or more employees. Thus, at most 635 international carriers would be classified as small entities. Many TRS filers, however, are affiliated with other carriers, and therefore the number of aggregated carriers is far fewer than the preceding estimate. Of the 445 toll filers, 239 reported no carrier affiliates. Adding 50 non-filers gives a lower estimate of 289 international carriers that would be classified as small entities. Thus, our best estimate of the total number of small entities is between 289 and 635. We are unable at this time to estimate with greater precision the number of international carriers that would qualify as small business entities under the SBA's definition. While not all of these entities may have provided international service in 1995, we expect that many of these entities will seek to do so in the future, as will additional entrants into the market.

21. *Title III Common Carrier Services. Cellular licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The closest applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular services carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet.* According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular services carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small cellular service carriers.

22. *220 MHz Radio Services.* Because the Commission has not yet defined a small business with respect to 220 MHz radio services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity employing less than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years, and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Since this definition has not yet been approved by the SBA, we will utilize the SBA's definition applicable to radiotelephone companies. Given the fact that nearly all radiotelephone companies employ fewer than 1,500 employees, with respect to the approximately 3,800 incumbent licensees in this service, we will consider them to be small businesses under the SBA definition.

23. *Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging services. Under that proposal, a small business would be either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. At present, there are approximately 74,000 Common Carrier Paging licensees. We estimate that the majority of common carrier paging providers would qualify as small businesses under the SBA definition.

24. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers such as paging companies. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet.* According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition. Consequently, we estimate that fewer than 117 mobile service carriers are small entities.

25. *Broadband Personal Communications Services (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 has defined *small entity* in the auctions for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenue of not more than $15 million for the preceding three calendar years. These regulations defining *small entity* in the context of broadband PCS auctions have been approved by the SBA. No small business within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small businesses won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

26. *Narrowband PCS.* The Commission does not know how many narrowband PCS licenses will be

granted or auctioned, as it has not yet determined the size or number of such licenses. Two auctions of narrowband PCS licenses have been conducted for a total of 41 licenses, out of which 11 were obtained by small businesses owned by members of minority groups and/or women. Small businesses were defined as those with average gross revenues for the prior three fiscal years of $40 million or less. For purposes of this initial regulatory flexibility analysis, the Commission is utilizing the SBA definition applicable to radiotelephone companies, i.e., an entity employing less than 1,500 persons. Not all of the narrowband PCS licenses have yet been awarded. There is therefore no basis to determine the number of licenses that will be awarded to small entities in future auctions. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective narrowband PCS licensees can be made, we assume, for purposes of the evaluations and conclusions in this Initial Regulatory Flexibility Analysis, that all the remaining narrowband PCS licenses will be awarded to small entities.

27. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in § 22.99 of the Commission's Rules. A significant subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems (the parameters of which are defined in § § 22.757 and 22.759 of the Commission's Rules). Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them have fewer than 1,500 employees.

28. *Air-Ground Radiotelephone.* The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in § 22.99 of the Commission's Rules. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

29. *Specialized Mobile Radio Licensees (SMR).* Pursuant to § 90.814(b)(1) of our rules, the Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of less than $15 million in each of the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations or how many of these providers have annual revenues of less than $15 million. We do know that one of these firms has over $15 million in revenues. We assume that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected includes these 60 small entities.

30. *Microwave Video Services.* Microwave services includes common carrier, private operational fixed, and broadcast auxiliary radio services. At present, there are 22,015 common carrier licensees. Inasmuch as the Commission has not yet defined *small business* with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with less than 1,500 employees. Although some of these companies may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of common carrier microwave service providers that would qualify under the SBA's definition. We therefore estimate that there are fewer than 22,015 small common carrier licensees in the microwave video services.

31. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. Some of those licensees are common carriers. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition.

32. *Local Multipoint Distribution Service (LMDS).* The Commission has so far licensed only one licensee in this service, and that licensee is not providing service as a common carrier. There will be a total of 986 LMDS licenses. Licensees will be permitted to decide whether to provide common carrier service, and we have no way of estimating how many will choose to do so. Because there will be no restrictions on the number of licenses a given entity may acquire, we have no way of estimating how many total licensees there will be. We also cannot estimate the number of common carrier licensees that will qualify as small entities.

33. *Space Stations (Geostationary).* Very few systems are currently operated on a common carrier basis. Because we do not collect information on annual revenue or number of employees of all these licensees, we cannot estimate with precision the number of such licensees that may constitute a small business entity. It is likely that no more than one such entity that is currently operating as a common carrier would constitute a small business entity. There may be a small increase in the number of such entities in the future as a result of recent licensing action in the Ka-band.

34. *Space Stations (Non-geostationary).* These systems by and large do not operate as common carriers. Because we do not collect information on annual revenue or number of employees, we cannot estimate with precision whether any carrier that may choose to operate on a common carrier basis constitutes a small business entity. The trend is for such systems to operate on a non-common carrier basis. These systems, of which there will be a limited number, by and large are not yet operational and are still being licensed and constructed.

35. *Earth Stations.* The vast majority of earth stations licensed by the Commission are not operated on a common carrier basis. Earth stations that communicate with non-geostationary and Ka-band satellite systems may operate on a common carrier basis but these systems are not yet operational and are still being licensed and constructed. We are unable to estimate at this time the number of earth stations communicating with such systems that may operate on a common carrier basis and, of those, the number that will be licensed to small business entities.

36. *Submarine Cable Landing Licenses.* Our proposals would affect all holders of and future applicants for cable landing licenses, whether or not they operate their cables as common carriers. We have no way of knowing how many applications for cable landing licenses will be filed in coming years, but that number will likely increase if we adopt our proposal to lower the barriers to granting licenses

for cables to WTO Member countries. Since 1992, there have been approximately 35 applications for cable landing licenses. The total number of licensees is difficult to determine, because many licenses are jointly held by several licensees. Our rules will also permit more current licensees to accept additional investment from entities from WTO Member countries.

37. *Reporting, recordkeeping, and other compliance requirements.* The actions contained in this Notice of Proposed Rulemaking may affect large and small carriers. We propose to require that U.S. carriers whose foreign affiliates have market power maintain or provide certain records regarding their foreign affiliates. Our proposals would in most cases reduce the burdens that are currently imposed on such carriers, and we anticipate that the remaining requirements would not impose a significant economic burden on small entities. A variety of skills may be required to comply with the proposed requirements, but all of the skills that may be required are of the type needed to conduct a carrier's normal course of business. No additional outside professional skills should be required, with the possible exception of preparing an initial Section 214 or cable landing license application and of preparing a submission for our consideration under § 310(b)(4), all of which would be simplified by our proposals.

38. *Section 214 and the Cable Landing License Act.* The proposed revisions to our rules and policies pursuant to Section 214 and the Cable Landing License Act would significantly reduce the burdens on international common carriers. Our proposal would reduce the burden on foreign-affiliated carriers seeking to enter the market by requiring only that they show that their foreign affiliate is from a country that is a Member of the World Trade Organization. We believe this to be a minimal burden for most small entities and a significant reduction of burdens relative to our current application requirements.

39. The proposed ''basic dominant carrier safeguards'' would be less burdensome to most international common carriers than our current regulations. Carriers would no longer be required to obtain approval before adding or discontinuing circuits. Instead, they would be required only to file quarterly notification of additions of circuits. We propose to eliminate the requirement that dominant carriers file their international service tariffs on no less than 14 days' notice. Instead, we would allow those carriers to file their international service tariffs on one day's notice and accord them a presumption of lawfulness. This change would reduce regulatory burdens and increase the ability of carriers to innovate and efficiently respond to changes in demand and cost. We propose to retain the requirements that carriers file quarterly traffic and revenue reports and keep records of provisioning and maintenance of basic network facilities and services procured from the foreign affiliate. We anticipate that most of the entities subject to dominant carrier regulation would not be small entities, but we seek comment on that tentative conclusion.

40. This Notice proposes to impose supplemental dominant carrier regulation on U.S. carriers whose foreign affiliates do not face facilities-based competition for international services in the destination countries in which they have market power. We believe that additional regulation of those carriers is necessary to ensure that the foreign carrier does not discriminate in favor of its U.S. affiliate. These additional requirements may include stricter structural separation between the U.S. carrier and its foreign affiliate; stricter limits on certain arrangements for the sharing of information, customers, and joint marketing; prior approval for addition of circuits; quarterly circuit status reports; filing an electronic summary of § 43.51 contracts; and quarterly provisioning and maintenance reports. We anticipate that few if any small entities would be subject to supplemental regulation, but we seek comment on that tentative conclusion.

41. The Notice also seeks comment on whether, in light of our proposal to liberalize our rules on market entry, we need to impose as a dominant carrier safeguard some level of structural separation between the U.S. carrier and its foreign affiliate.

42. We have considered the impact on small and large entities in developing these proposals, and we view these proposed regulations as critical to preventing anticompetitive conduct. We also believe that these safeguards would protect small entities from entities that are affiliated with large foreign carriers by preventing foreign affiliates from leveraging their market power to the disadvantage of small, independent entities. We seek comment on whether we can further reduce the burdens on small entities and still achieve our goal of preventing anticompetitive behavior in the U.S. market.

43. *Section 310(b)(4).* We also propose to reduce the burdens on common carrier licensees with foreign investment from WTO Member countries. Section 310(b)(4) of the Communications Act has always required that we make a finding about whether indirect foreign investment in excess of 25 percent would serve the public interest. Our proposal here would, in many cases, greatly simplify the required showing by licensees or potential licensees. An applicant that could show that its foreign investor's principal place of business is in a country that is a Member of the WTO would in most cases have to make no further showing. An applicant whose foreign investment comes from a country that is not a WTO Member would still have to show that it satisfies the effective competitive opportunities test, but that burden would not be greater than that imposed by our current requirements.

44. This Notice asks for comment on whether we should adopt specific criteria for denial of Title III common carrier (and Section 214) applications that present such an unusual danger of anticompetitive effects that they should be denied even though the foreign investment is from WTO Member countries. We also ask whether we can further reduce regulatory burdens by eliminating our review of increases in foreign ownership by licensees that already have more than 25 percent foreign ownership. We also seek comment on other ways in which the consideration of foreign investment under § 310(b)(4) could be made less burdensome for small entities.

45. *Accounting Rate Flexibility.* We propose to reduce the burden on U.S. carriers that seek approval of alternative settlement rate arrangements with foreign carriers from WTO Member countries. Currently, a carrier seeking such approval must file a detailed petition for declaratory ruling showing that the alternative arrangement is permitted under the criteria adopted in our *Flexibility Order*, Regulation of International Accounting Rates, Docket No. CC 90–337, *Phase II, Fourth Report and Order*, 62 FR 5535, February 6, 1997) (*Flexibility Order*). We propose here to require only that an applicant show that the foreign carrier is operating in a country that is a Member of the WTO. An opposing party would have the burden of showing that market conditions in the country in question are not sufficient to prevent a carrier with market power from discriminating against U.S. carriers.

46. *Federal rules that overlap, duplicate, or conflict with the Commission's proposal.* None.

47. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* In

developing the proposals contained in this Notice, we have attempted to minimize the burdens on all entities in order to allow maximum participation in the U.S. telecommunications markets while achieving our other objectives. We seek comment on the impact of our proposals on small entities and on any possible alternatives that could minimize the impact of our rules on small entities. In particular, we seek comment on alternatives to the reporting, recordkeeping, and other compliance requirements discussed above. We also seek specific comment on the impact on small entities of our proposals to modify our dominant carrier safeguards.

48. *Comments are solicited* Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with § 603(a) of the Regulatory Flexibility Act.

Initial Paperwork Reduction Act of 1995 Analysis

49. This Notice of Proposed Rulemaking contains either a proposed or a modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) 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 August 18, 1997. 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.

50. We do not anticipate that the proposed rules will have any impact on the paperwork burden imposed under the Commission's *Flexibility Policy* established in the *Fourth Report and Order*, CC Docket No. 90–337, Phase I [62 FR 5535, February 6, 1997]; [OMB Control Nos. 3060–0160 and 3060–0764].

51. The rule changes proposed here have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burdens on the public. Accordingly, their implementation is not subject to approval by the Office of Management and Budget under that Act.

OMB Approval Number: 3060–0686.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Type of Review: Revision of existing collection.

Respondents: Business or other For-Profit.

Number of Respondents: 3,238.

Estimated Time Per Response: 14 hours.

Total Annual Burden: 23,603 hours.

Estimated costs per respondent: $263.

Needs and Uses: The information collections are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications services, or to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have market power. The information collected is necessary for the Commission to ensure that rates, terms and conditions for international service are just and reasonable, as required by the Communications Act of 1934.

52. The information collections under § 310(b)(4) of the Act are necessary to determine, under that section, whether a greater than 25 percent indirect foreign ownership interest in a U.S. common carrier ratio licensee would be inconsistent with the public interest.

Ordering Clauses

53. Accordingly, it is ordered that, pursuant to §§ 1, 4(i), 201(b), 214, 303(r), 307, 309(a), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, 303(r), 307, 309(a), 310, this notice of proposed rulemaking is hereby adopted.

54. The Commission's decision also included minor changes to part 63 of the Commission's rules, which are published elsewhere in this issue.

55. It is further ordered that the Secretary shall send a copy of this notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

List of Subjects in 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–15703 Filed 6–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 96–261, DA 97–1173]

International Settlement Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for supplemental comments.

SUMMARY: On June 4, 1997, the Federal Communications Commission adopted an Order and Notice of Proposed Rulemaking to review its rules and policies governing foreign participation in the U.S. market for basic telecommunications services. (*See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market* (FCC 97–195, IB Docket No. 97–142) published elsewhere in this issue.) In light of that NPRM, the Commission released a Public Notice soliciting supplemental comments in another ongoing FCC proceeding, *International Settlement Rates*, IB Docket No. 96–261 [61 FR 68702, December 30, 1996]. In the Public Notice, the Commission states that parties should submit supplemental comments and reply comments on only one specific proposal.

DATES: Supplemental Comments must be submitted on or before June 24, 1997, and Supplemental Reply Comments must be submitted on or before July 2, 1997.

ADDRESSES: All supplemental comments and supplemental reply comments should be addressed to: Office of the Secretary, Federal Communications Commission, Washington D.C. 20554. All supplemental comments and supplemental reply comments will be