

Counsel, Network Services Division, Common Carrier Bureau, (202) 418-2337.

**SUPPLEMENTARY INFORMATION:** This summarizes the Commission's Second Further Notice of Proposed Rulemaking in the matter of Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of § 68.213 of the Commission's Rules filed by Electronic Industries Association, FCC 97-209, adopted June 12, 1997, and released June 17, 1997. The Commission concurrently released an Order on Reconsideration and Second Report and Order in the same docket. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857-3800.

#### Analysis of Proceeding

1. The *SFNPRM* asks for comment on the application of the revised demarcation point definition to complex wiring. The Commission seeks comment on whether it should continue to allow the telephone company demarcation point to be placed away from a building, at the property line. The Commission seeks comment on whether the use of poor quality inside wiring in one building affects service in other buildings. It also asks for comment on an enhanced wire quality standard designed to address the problem of cross-talk. The Commission seeks comment on whether the enhanced wire quality standard should be adopted as a two-year interim standard, and what industry body or bodies should be the entity through which members work to develop a permanent standard to solve the problems created by poor quality inside wiring. It asks whether the enhanced wire quality standard is overly restrictive. The Commission also requests comment on a proposal that wire meeting the proposed interim standard be marked at specific intervals. The Commission asks for comment on whether the standard for determining whether a material meets the requirements for gold or gold equivalence, should also be an interim standard effective for two years, until industry develops a permanent standard. It seeks comment concerning through which industry body or bodies a permanent standard should be

developed if the standard becomes only an interim standard.

2. It is further ordered that, pursuant to Sections 1, 4, 201-205, 218, and 220, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 218, and 220, and 5 U.S.C. §§ 552 and 553, *Second Further Notice of Proposed Rulemaking* is provided to amend part 68 of the Commission's rules, as described herein.

#### List of Subjects in 47 CFR Part 68

Telephone.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

Accordingly part 68 of title 47 is proposed to be amended as follows:

#### PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE NETWORK

1. The authority citation for part 68 continues to read as follows:

**Authority:** Secs. 1, 4, 5, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 602 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 602.

2. Section 68.213 is proposed to be amended by revising paragraph (c) to read as follows:

#### § 68.213 Installation of other than "fully protected" non-system simple customer premises wiring.

\* \* \* \* \*

(c) *Material requirements.*

(1) For new installations and modifications to existing installations, conductors shall be solid, 24 gauge or larger, twisted copper pairs which comply with the electrical specifications for Category 3 or higher as defined in the ANSI EIA/TIA Building Wiring Standards.

(2) Conductors shall have insulation with a 1500 Volt rms minimum breakdown rating. This rating shall be established by covering the jacket or sheath with at least 15 cm (6 in) (measured linearly on the cable) of conductive foil, and establishing a potential difference between the foil and all of the individual conductors connected together, such potential difference gradually increased over a 30 second time period to 1500 Volts rms, 60 Hertz, then applied continuously for one minute. At no time during this 90 second time interval shall the current between these points exceed 10 milliamperes peak.

(3) All wire and connectors meeting the requirements set forth in paragraphs (c)(1) and (2) of this section shall be

marked in a manner visible to the consumer, as recommended in the ANSI EIA/TIA premises cabling standards.

\* \* \* \* \*

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#### DEPARTMENT OF TRANSPORTATION

##### Surface Transportation Board

#### 49 CFR Parts 1002, 1182, 1187, and 1188

[STB Ex Parte No. 559]

#### Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board proposes to establish revised procedures governing finance applications involving motor passenger carriers, filed under 49 U.S.C. 14303. The proposed procedures adopt, with modifications, the existing procedures promulgated by the Interstate Commerce Commission (ICC). In addition, the regulations in parts 1187 and 1188 are proposed to be removed and replaced by new provisions incorporated in part 1182. (Accordingly, in a separate notice published today, the rulemaking proposed by the ICC in Ex Parte No. MC-216 is being discontinued.)

**DATES:** Comments are due on August 7, 1997.

**ADDRESSES:** Send comments (an original and 10 copies) referring to STB Ex Parte No. 559 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Mercury Building, 1925 K Street, N.W., Washington, DC 20423-0001.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

**SUPPLEMENTARY INFORMATION:** The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), which took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain of its motor carrier regulatory functions to the Secretary of Transportation (Secretary) and to the Surface Transportation Board (Board). See ICCTA section 101 (abolition of the ICC). See also new 49 U.S.C. 13101-14914 (regulatory provisions applicable to motor carriers, administered in part by the Secretary and in part by the Board).

**Finance Jurisdiction.** Under the new provisions of 49 U.S.C. 14303, the Board has jurisdiction over finance transactions i.e., consolidations, mergers, purchases, leases, and contracts to operate properties or franchises involving motor passenger carriers.<sup>1</sup> The Board's jurisdiction over these finance transactions is similar to that of the ICC.

Since enactment of the ICCTA, the Board has continued to apply in motor passenger carrier cases the procedural rules that were promulgated by the ICC. In most instances, the former rules have provided adequate and appropriate guidance to applicants and other interested parties, and there have been no difficulties in applying those rules under the new statute. The rules, however, are obsolete in some areas.

The Board has reviewed the regulations and has determined that certain modifications are required to conform them to the new statute and to assure expeditious processing of motor passenger carrier finance proceedings. Relatively few substantive modifications are required to the former regulations, and these are detailed in a separate decision, which is available to all persons for a charge by calling DC NEWS & DATA, INC., at (202) 289-4357.

### Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

### Regulatory Flexibility Analysis

The Board certifies that the rules proposed, if adopted, would not have a significant economic impact on any substantial number of small entities. The procedures established are simple and expeditious, impose no additional reporting requirements on small entities, and maintain the rapid processing time typical of such applications under the former rules promulgated by the ICC. The Board seeks comments, however, on whether there would be effects on small entities that should be considered.

### List of Subjects

#### 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

<sup>1</sup> The ICC had similar jurisdiction over such transactions involving motor carriers of property and water carriers as well.

#### 49 CFR Part 1182

Administrative practice and procedure, Maritime carriers, Motor carriers.

#### 49 CFR Part 1187

Administrative practice and procedure, Maritime carriers, Motor carriers.

#### 49 CFR Part 1188

Administrative practice and procedure, Motor carriers.

Decided: June 20, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**  
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1002, 1182, 1187, and 1188 of the Code of Federal Regulations are proposed to be amended as follows:

### PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721(a).

2. Section 1002.2 is proposed to be amended by revising fee items (2) and (5) in the table in paragraph (f) to read as follows:

#### § 1002.2 Filing fees.

(f) \* \* \*

Type of proceeding	Fee
(2) An application to consolidate, merge, purchase, lease, or contract to operate the properties or franchises of motor carriers of passengers or to acquire control of motor carriers of passengers, under 49 U.S.C. 14303 .....	1,100.
.....	*
(5) A request for interim approval in connection with a finance application involving a motor carrier of passengers, under 49 U.S.C. 14303(i) .....	250.
.....	*

3. Part 1182 is proposed to be revised to read as follows:

### PART 1182—PURCHASE, MERGER, AND CONTROL OF MOTOR PASSENGER CARRIERS

Sec.

- 1182.1 Applications covered by these rules.
- 1182.2 Content of applications.
- 1182.3 Filing the application.
- 1182.4 Board review of the application.
- 1182.5 Comments.
- 1182.6 Processing an opposed application.

1182.7 Interim approval.

1182.8 Miscellaneous requirements.

**Authority:** 5 U.S.C. 559; 21 U.S.C. 853a; and 49 U.S.C. 13501, 13902(c), and 14303.

#### § 1182.1 Applications covered by these rules.

These rules govern applications for authority under 49 U.S.C. 14303 to consolidate, merge, purchase, lease, or contract to operate the properties or franchises of motor carriers of passengers or to acquire control of motor carriers of passengers. There is no application form for these proceedings. Applicants shall file a pleading containing the information described in 49 CFR 1182.2. See 49 CFR 1002.1(f)(2) and (5) for filing fees.

#### § 1182.2 Content of applications.

(a) The application must contain the following information:

- (1) Full name, address, and authorized signature of each of the parties to the transaction;
- (2) Copies or descriptions of the pertinent operating authorities of all of the parties; (NOTE: If an applicant is domiciled in Mexico or owned or controlled by persons of that country, copies of the actual operating authorities must be submitted.)
- (3) A description of the proposed transaction;
- (4) Identification of any motor passenger carriers affiliated with the parties, a brief description of their operations, and a summary of the intercorporate structure of the corporate family from top to bottom;
- (5) A jurisdictional statement, under 49 U.S.C. 14303(g), that the aggregate gross operating revenues, including revenues of all motor carrier parties and all of their motor carrier affiliates from all transportation sources (whether interstate, intrastate, foreign, regulated, or unregulated) exceeded \$2 million;

(Note: The motor passenger carrier parties and their motor passenger carrier affiliates may select a consecutive 12-month period ending not more than 6 months before the date of the parties' agreement covering the transaction. They must, however, select the same 12-month period.)

(6) A statement indicating whether the transaction will or will not significantly affect the quality of the human environment and the conservation of energy resources;

(7) Information to demonstrate that the proposed transaction is consistent with the public interest, including particularly: the effect of the proposed transaction on the adequacy of transportation to the public; the total fixed charges (e.g., interest) that result from the proposed transaction; and the

(6) A statement indicating whether the transaction will or will not significantly affect the quality of the human environment and the conservation of energy resources;

(7) Information to demonstrate that the proposed transaction is consistent with the public interest, including particularly: the effect of the proposed transaction on the adequacy of transportation to the public; the total fixed charges (e.g., interest) that result from the proposed transaction; and the

interest of carrier employees affected by the proposed transaction. See 49 U.S.C. 14303(b);

(8) Certification of the U.S. Department of Transportation safety fitness rating of each motor passenger carrier involved in the transaction, whether that carrier is a party to the transaction or is affiliated with a party to the transaction;

(9) Certification by the party acquiring any operating rights through the transaction that it has sufficient insurance coverage under 49 U.S.C. 13906(a) and (d) for the service it intends to provide;

(10) A statement indicating whether any party acquiring any operating rights through the transaction is either domiciled in Mexico or owned or controlled by persons of that country; and

(11) If the transaction involves the transfer of operating authority to an individual who will hold the authority in his or her name, that individual must complete the following certification:

I, \_\_\_\_\_, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that I have been so convicted, but I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(b) The application shall contain applicants' entire case in support of the proposed transaction, unless the Board finds, on its own motion or that of a party to the proceeding, that additional evidentiary submissions are required to resolve the issues in a particular case.

(c) Any statements submitted on behalf of an applicant supporting the application shall be verified, as provided in 49 CFR 1182.8(e). Pleadings consisting strictly of legal argument, however, need not be verified.

(d) If an application or supplemental pleading contains false or misleading information, the granted application is void ab initio.

#### **§ 1182.3 Filing the application.**

(a) Each application shall be filed with the Board, complying with the requirements set forth at 49 CFR 1182.8.

(1) One copy of the application shall be delivered, by first-class mail, to the appropriate regulatory body in each State in which any of the parties operates in intrastate commerce.

(2) If the application involves the merger or purchase of motor passenger carriers (contemplating transfer of operating authorities or registrations from one or more parties to others), one

copy of the application shall be delivered, by first-class mail, to:

Chief, Lic. & Ins. Div., U.S.D.O.T. Office of Motor Carriers-HIA 30, 400 Virginia Ave. SW, Ste. 600, Washington, DC 20004

(b) In their application, the parties shall certify that they have delivered copies of the application as provided in paragraph (a) of this section.

#### **§ 1182.4 Board review of the application.**

(a) All applications will be reviewed for completeness. Applicants will be given an opportunity to correct minor errors or omissions. Incomplete applications may be rejected, or, if omissions are corrected, the filing date of the application, for purposes of calculating the procedural schedule and statutory deadlines, will be deemed to be the date on which the complete information is filed with the Board.

(b) If the application is accepted, a summary of the application will be published in the **Federal Register** (within 30 days, as provided by 49 U.S.C. 14303(c)), to give notice to the public, in the form of a tentative grant of authority.

(c) If the published notice does not properly describe the transaction for which approval is sought, applicants shall inform the Board within 10 days after the publication date.

(d) A copy of the application will be available for inspection at the Board's offices in Washington, DC. Interested persons may obtain a copy of the application from the applicants' representative, as specified in the published notice.

#### **§ 1182.5 Comments.**

(a) Comments concerning an application must be received by the Board within 45 days after notice of the application is published, as provided by 49 U.S.C. 14303(d). Failure to file a timely comment waives further participation in the proceeding. If no comments are filed opposing the application, the published tentative grant of authority will automatically become effective at the close of the comment period. A tentative grant of authority does not entitle the applicant to consummate the transaction before the end of the comment period.

(b) A comment shall be verified, as provided in 49 CFR 1182.8(e), and shall contain all information upon which the commenter intends to rely, including the grounds for any opposition to the transaction and the commenter's interest in the proceeding.

(c) The docket number of the application must be conspicuously placed at the top of the first page of the comment.

(d) A copy of the comment shall be delivered concurrently to applicants' representative(s).

#### **§ 1182.6 Processing an opposed application.**

(a) If timely comments are submitted in opposition to an application, the tentative grant of authority is void.

(b) Applicants may file a reply to opposing comments, within 60 days after the date the application was published.

(1) The reply may include a request for an expedited decision on the issues raised by the comments. Otherwise, the reply may not contain any new evidence, but shall only rebut or further explain matters previously raised.

(2) The reply shall be verified, as provided in 49 CFR 1182.8(e), unless it consists strictly of legal argument.

(3) Applicants' reply must be served on each commenter in such manner that it is received no later than the date it is due to be filed with the Board.

(4) Opposing commenters may reply to a request for an expedited decision, within 70 days after notice of the application was published.

(c) The Board may

(1) Dispense with further proceedings and make a final determination based on the record as developed; or

(2) Issue a procedural schedule specifying the dates by which: applicants may submit additional evidence in support of the application, in response to the comment(s) in opposition; and the opposing commentator(s) may reply.

(d) Further processing of an opposed application will be handled on a case-by-case basis, as appropriate to the particular issues raised in the comments filed in opposition to the application. Evidentiary proceedings must be concluded within 240 days after publication of the notice of the application.

#### **§ 1182.7 Interim approval.**

(a) A party may request interim approval of the operation of the properties sought to be acquired through the proposed transaction, for a period of not more than 180 days pending determination of the application. This request may be included in the application or may be submitted separately after the application is filed (e.g., once a comment opposing the application has been filed). An additional filing fee is required, whether the request for interim approval is included in the application or is submitted separately, at a later time. See 49 CFR 1002.2(f)(5) for the additional filing fee.

(b) A request for interim approval of the operation of the properties sought to be acquired in the application must show that failure to grant interim approval may result in destruction of or injury to those properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public.

(c) If a request for interim approval is submitted after the application is filed, it must be served on each person who files or has filed a comment in response to the published notice of the application. Service must be simultaneous upon those commenters who are known when the request for interim approval is submitted; otherwise, service must be within 5 days after the comment is received by applicants or their representative.

(d) Because the basis for requesting interim approval is to prevent destruction of or injury to motor passenger carrier properties sought to be acquired under 49 U.S.C. 14303, the processing of such requests is intended to promote expeditious decisions regarding interim approval. The Board has no obligation to give public notice of requests for interim approval, and such requests are decided without hearing or other formal proceeding.

(1) If a request for interim approval is included in the application, the Board's decision with regard to interim approval will be served in conjunction with the notice accepting the application.

(2) If an application is rejected, the request for interim approval will be denied.

(3) If an application is denied, after comments in opposition are submitted, any interim approval will terminate 30 days after service of the decision denying the application.

(e) A petition to reconsider a grant of interim approval may be filed only by a person who has filed a comment in opposition to the application.

(1) A petition to reconsider a grant of interim approval must be in writing and shall state the specific grounds upon which the commenter relies in opposing interim approval. The petition shall certify that a copy has been served on applicants' representative.

(2) The original and 10 copies of the petition to reconsider a grant of interim approval shall be filed with the Board, and one copy of the petition shall be served on applicants' representative(s).

(f) The Board may act on a petition to reconsider a grant of interim approval either separately or in connection with the final decision on the application.

#### § 1182.8 Miscellaneous requirements.

(a) If applicants wish to withdraw an application, they shall jointly request dismissal in writing.

(b) An original and 10 copies of all applications, pleadings, and other material filed under this part must be filed with the Board.

(c) All pleadings (including motions and replies) submitted under this part shall be served on all other parties, concurrently and by the same (or more expeditious) means with which they are filed with the Board.

(d) Each pleading shall contain a certificate of service stating that the pleading has been served in accordance with paragraph (c) of this section.

(e) All applications and pleadings containing statements of fact (i.e., except motions to strike, replies thereto, and other pleadings that consist only of legal argument) must be verified by the person offering the statement, in the following manner:

I, [Name and Title of Witness], verify under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense. [Signature and Date]

(f) If completion of a transaction requires the transfer of operating authorities or registrations from one or more parties to others, the parties shall comply with relevant procedures of State authorities and of the Office of Motor Carriers of the U.S. Department of Transportation, to accomplish such transfers.

#### PART 1187—[REMOVED]

4. Part 1187 is proposed to be removed.

#### PART 1188—[REMOVED]

5. Part 1188 is proposed to be removed.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Parts 1181, 1182, 1186, and 1188

[Ex Parte No. MC-216]

### Jurisdiction Over Motor Finance Transactions

AGENCY: Surface Transportation Board.

ACTION: Proposed rule, withdrawal.

**SUMMARY:** The Surface Transportation Board is discontinuing the rulemaking in Ex Parte No. MC-216. The rulemaking is discontinued because the regulatory support is no longer required. **DATES:** This withdrawal is effective on July 8, 1997.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.] **SUPPLEMENTARY INFORMATION:** The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), which took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain of its motor carrier regulatory functions to the Secretary of Transportation (Secretary) and to the Surface Transportation Board (Board). See ICCTA section 101 (abolition of the ICC). See also new 49 U.S.C. 13101-14914 (regulatory provisions applicable to motor carriers, administered in part by the Secretary and in part by the Board).

Prior to January 1, 1996, former 49 U.S.C. 11343 provided that certain motor carrier transactions, including those related to mergers, purchases, and acquisitions of control, could not be carried out without prior ICC approval. Under former 49 U.S.C. 11343(d)(1), however, ICC approval was not required if the only parties were motor carriers and their "aggregate gross operating revenues" did not exceed \$2 million during a consecutive 12-month period ending not more than 6 months before the date of the agreement underlying the transaction.

Sale, lease, and merger transactions involving only motor carriers whose aggregate gross operating revenues did not exceed the \$2 million threshold were subject to prior ICC approval under former 49 U.S.C. 10926 and the small carrier transfer rules of 49 CFR part 1181. Control transactions involving only motor carriers whose aggregate gross operating revenues did not exceed the \$2 million threshold were not subject to ICC jurisdiction.

In the notice of proposed rulemaking (NPR) in this proceeding, served