

Feasibility Study (RI/FS) at the Site. EPA installed monitoring wells and collected samples from surface water, lagoon sludge, and liquids contained in onsite tanks. A Record of Decision (ROD) was signed in June, 1982 which called for onsite containment and dike stabilization at the Site.

In April, 1984, toxic gases were released from the lagoon when a previously unidentified crust layer was broken during the remedial construction. The gas was found to contain dangerous concentrations of carbon dioxide, sulfuric acid mist and hydrogen sulfide. Based on these findings, EPA suspended the cleanup activity at the Site, and began an immediate removal action to prevent a further release of toxic gas into the nearby residential community. As part of this removal action, the open lagoon was covered, sludges were stabilized, gas monitoring wells were installed, and additional soil and sludge samples were collected for further analysis. The removal action was completed in September, 1984.

In January 1985, EPA began a second RI/FS at the Site. In September 1986, a second ROD for the Site was signed. The remedy in this ROD included onsite stabilization of sludges in the lagoon area, completion of the dike reinforcement, installation of a new monitoring well network and capping the lagoon area with a multi-layer cap. This construction was completed in March, 1992. Approximately 80,000 cubic yards of contaminated waste were stabilized and placed under the multi-layer cap.

A five-year review has been conducted and was completed in April, 1993. The five-year review confirmed that the remedy is in place, the multi-layer cap is working properly, and the ground surface is covered with vegetation. It is therefore apparent that the remedy is still protective of the public health and the environment. The next five-year review must be completed by April 30, 1998. Subsequent five-year reviews will be conducted pursuant to OSWER Directive 9355.7-02. "Structure and Components of Five-Year Reviews," or other applicable guidance where it exists.

Long-term operation and maintenance activities at this Site are performed by the State of Pennsylvania. These activities includes annual inspections of the Site to ensure that erosion control measures are effective, routine mowing of the onsite vegetation, maintenance of the perimeter fence and periodic sampling of the onsite monitoring wells.

The remedies selected for this Site has been implemented in accordance with

the two RODs, as modified and expanded in the EPA-approved Remedial Designs. The completion of the cleanup has resulted in the significant reduction of the long-term potential for release of contaminated wastes within the lagoon area to the surrounding environment. Human health threats and potential environmental impacts from the Site have been minimized. EPA and the State of Pennsylvania find that the remedies implemented continue to provide adequate protection of human health and the environment.

EPA, with the concurrence of the State of Pennsylvania, believes that all the criteria for deletion of this Site have been met. Therefore, EPA is proposing deletion of this Site from the NPL.

Dated: June 24, 1997.

W. Michael McCabe,

Regional Administrator, USEPA Region III.

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XII and Part 1201

Service of Process; Production or Disclosure of Official Material or Information

AGENCY: Corporation for National and Community Service.

ACTION: Notice of proposed rulemaking; Request for public comment.

SUMMARY: The Corporation for National and Community Service (Corporation) proposes to remove its obsolete regulations on standards of conduct which have been superseded by the Office of Government Ethics Uniform Standards of Conduct (5 CFR Part 2635). In place of those obsolete regulations the Corporation seeks to replace Part 1201 with a provision for the disclosure of litigation-related information. The Corporation expects this proposed rule will promote consistency in the Corporation's assertions of privileges and objections, thereby reducing the potential for both inappropriate disclosure of information and wasteful allocation of Corporation resources.

DATES: All comments must be received at the address listed below before August 18, 1997.

ADDRESSES: All comments must be mailed to the attention of Britanya Rapp, Associate General Counsel, Corporation for National and Community Service, 1201 New York Ave, Suite 8200, Washington, DC 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION CONTACT: Britanya Rapp, Associate General Counsel, Corporation for National and Community Service at (202) 606-5000, ext. 258.

SUPPLEMENTARY INFORMATION: The Corporation proposes this rulemaking in order to clarify policies, procedures, and responsibilities regarding:

(1) the service of legal process on the Corporation and any individuals connected with the Corporation;

(2) the production of official Corporation information in matters of litigation; and

(3) the appearance of, and testimony by, any individuals connected with the Corporation in matters of litigation.

The Corporation expects this proposed rule will promote consistency in the Corporation's assertions of privileges and objections, thereby reducing the potential for both inappropriate disclosure of information and wasteful allocation of Corporation resources. This rule is intended only to inform the public about Corporation procedures concerning the service of process and responses to demands or requests and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Corporation or the United States.

The proposed regulations are not subject to the provisions of the Paperwork Reduction Act, the Freedom of Information Act, or the Government in the Sunshine Act because they do not contain any information requirements within the meaning of those Acts. These regulations also do not signify a "significant regulatory action" as defined by Executive Order 12866, and thus do not fall within the requirements of that Order. Nothing in this part otherwise permits disclosure of information by the Corporation or any individuals connected to the Corporation except as provided by statute or other applicable law.

List of Subjects in 45 CFR Part 1201

Administrative practice and procedure, Courts, Freedom of information.

The Proposed Regulations

Accordingly, and under the authority of 42 U.S.C. 12501 *et seq.*, the Corporation proposes to amend Chapter XII of title 45 of the Code of Federal Regulations as follows:

1. The heading for Chapter XII is revised to read as follows:

CHAPTER XII—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

2. Part 1201 is revised to read as follows:

PART 1201—PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES, OR IN CONNECTION WITH FEDERAL OR STATE LITIGATION

Sec.

- 1201.1 Definitions.
- 1201.2 Scope.
- 1201.3 Service of summonses and complaints.
- 1201.4 Service of subpoenas, court orders, and other demands or requests for official information or action.
- 1201.5 Testimony and production of documents prohibited unless approved by appropriate Corporation officials.
- 1201.6 Procedure when testimony or production of documents is sought.
- 1201.7 Procedure when response to demand is required prior to receiving instructions.
- 1201.8 Procedure in the event of an adverse ruling.
- 1201.9 Considerations in determining whether the Corporation will comply with a demand or request.
- 1201.10 Prohibition on providing expert or opinion testimony.
- 1201.11 Authority.

Authority: 42 U.S.C. 12501 *et seq.*

§ 1201.1 Definitions.

(a) *Employee* means the Chief Executive Officer of the Corporation and all employees, former employees, National Civilian Community Corps Members, and VISTA volunteers who are or were subject to the supervision, jurisdiction, or control of the Chief Executive Officer, except as the Corporation may otherwise determine in a particular case.

(b) *Litigation* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature.

(c) *Official information* means all information of any kind, however stored, that is in the custody and control of the Corporation, relates to information in the custody and control of the Corporation, or was acquired by individuals connected with the Corporation as part of their official status within the Corporation while such individuals are employed by or serve on behalf of the Corporation.

§ 1201.2 Scope.

(a) This part states the procedures followed with respect to—

(1) Service of summonses and complaints or other requests or

demands directed to the Corporation or to any employee of the Corporation in connection with Federal or State litigation arising out of, or involving the performance of, official activities of the Corporation; and

(2) Oral or written disclosure, in response to subpoenas, orders, or other requests or demands of Federal or State judicial or quasi-judicial authority, whether civil or criminal, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters of—

(i) Any material contained in the files of the Corporation; or

(ii) Any information acquired: (A) When the subject of the request is currently a Corporation employee or was an employee of the Corporation; or

(B) As part of the performance of the person's duties or by virtue of the person's position.

§ 1201.3 Service of summonses and complaints.

(a) Only the Corporation's General Counsel, or his/her delegate, is authorized to receive and accept summonses or complaints sought to be served upon the Corporations or its employees. All such documents should be delivered or addressed to General Counsel, Corporation for National and Community Service, 1201 New York Avenue, Suite 8200, Washington, DC 20525.

(b) In the event any summons or complaint is delivered to an employee of the Corporation other than in the manner specified in this part, such attempted service shall be ineffective, and the recipient thereof shall either decline to accept the proffered service or return such document under cover of a written communication which directs the person attempting to make service to the procedures set forth in this part.

(c) Except as otherwise provided in § 1201.4(c), the Corporation is not an authorized agent for service of process with respect to civil litigation against Corporation employees, CorpsMembers, or VISTA Members purely in their personal, non-official capacity. Copies of summonses or complaints directed to Corporation employees, CorpsMembers, or VISTA Members in connection with legal proceedings arising out of the performance of official duties may, however, be served upon the Corporation's General Counsel, or his/her delegate.

§ 1201.4 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which the Corporation is represented by legal counsel who have entered an

appearance or otherwise given notice of their representation, only the Corporation's General Counsel, or his/her delegate, is authorized to receive and accept subpoenas, or other demands or requests directed to any component of the Corporation or its employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Corporation;

(2) Information, including testimony, affidavits, declarations, admissions, response to interrogatories, or informal statements, relating to material contained in the files of the Corporation or which any Corporation employee acquired in the course and scope of the performance of official duties;

(3) Garnishment or attachment of compensation of employees; or

(4) The performance or non-performance of any official Corporation duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to a Corporation employee other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such employee shall, after consultation with the Office of the General Counsel, decline to accept the subpoena, and demand or request the return of it under cover of a written communication referring to the procedures prescribed in this part.

(c) Except as otherwise provided in this part, the Corporation is not an agent for service or otherwise authorized to accept on behalf of its employees any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees official duties except upon the express, written authorization of the individual Corporation employee to whom such demand or request is directed.

(d) Acceptance of such documents by the Corporation's General Counsel, or his/her delegate, does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure (28 U.S.C. appendix, Rules 4–6, or 18 U.S.C. appendix) or other applicable rules.

§ 1201.5 Testimony and production of documents prohibited unless approved by appropriate Corporation officials.

(a) Unless authorized to do so by the Corporation's General Counsel, or his/her delegate, no employee of the Corporation shall, in response to a demand or request in connection with any litigation, whether criminal or civil,

provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired:

- (1) While such person was an employee of the Corporation;
- (2) As part of the performance of that person's official duties; or
- (3) By virtue of that person's official status.

(b) No employee of the Corporation shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any other material acquired as part of the performance of that individual's duties or by virtue of that individual's official status, unless authorized to do so by the Corporation's General Counsel, or his/her delegate.

§ 1201.6 Procedure when testimony or production of documents is sought.

(a) If official Corporation information is sought, through testimony or otherwise the party seeking such release or testimony must (except as otherwise required by federal law or authorized by the Office of the General Counsel) set forth in writing with as much specificity as possible, the nature and relevance of the official information sought. The party must identify the record or reasonably describe it in terms of date, format, subject matter, the offices originating or receiving the record, and the names of all persons to whom the record is known to relate. Corporation employees may produce, disclose, release, comment upon, or testify concerning only those matters that were specified in writing and properly approved by the Corporation's General Counsel or his/her delegate. The Office of the General Counsel may waive this requirement in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, the Corporation may also require from the party seeking such testimony or documents a plan of all reasonably foreseeable demands, including but not limited to the names of all current and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) The Corporation's General Counsel, or his/her delegate, will notify the Corporation employee and such other persons as circumstances may warrant of the decision regarding compliance with the request or demand.

(d) The Office of the General Counsel will consult with the Department of Justice regarding legal representation for

Corporation employees in appropriate cases.

§ 1201.7 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before the Corporation's General Counsel, or his/her delegate, renders a decision, the Corporation will request that either a Department of Justice attorney or a Corporation attorney designated for the purpose:

(1) Appear, if feasible, with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this part;

(3) Inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Corporation's General Counsel, or his/her delegate; and

(4) Respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances that would preclude the proper designation or appearance of a Department of Justice or Corporation attorney on behalf of the employee shall respectfully request the demanding court or authority for a reasonable stay of proceedings for the purpose of obtaining instructions from the Corporation.

§ 1201.8 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made pursuant to § 1201.7, or if the court or other authority rules that the demand must be complied with irrespective of the Corporation's instructions not to produce the material or disclose the information sought, the individual upon whom the demand has been made shall respectfully decline to comply with the demand, citing the regulations in this part.

§ 1201.9 Considerations in determining whether the Corporation will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, Corporation officials and attorneys are encouraged to consider:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of Corporation employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by the Corporation of its mission and duties; and

(8) The need to avoid involving the Corporation in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance may not ordinarily be authorized are those when compliance would:

(1) Violate a statute, a rule of procedure, a specific regulation, or an executive order;

(2) Reveal information properly classified in the interest of national security;

(3) Reveal confidential commercial or financial information or trade secrets without the owner's consent;

(4) Reveal the internal deliberative processes of the Executive Branch; or

(5) Potentially impede or prejudice an ongoing law enforcement investigation.

§ 1201.10 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, Corporation employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official Corporation duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the Corporation's General Counsel or his/her delegate may, in the exercise of discretion, grant special, written authorization for Corporation employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of the Corporation's General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a Corporation employee

such individual shall immediately inform the Office of General Counsel of such order. If the Office of the General Counsel determines that no further legal review of or challenge to the court's order will be made, the Corporation employee, CorpsMember, or VISTA Member shall comply with the order. If so directed by the Office of the General Counsel, however, the individual shall respectfully decline to testify.

§ 1201.11 Authority.

The Corporation receives authority to change its governing regulations from the National and Community Service Act of 1990 as amended (42 U.S.C. 12501 *et seq.*).

Dated: July 10, 1997.

Stewart A. Davis,

Acting General Counsel, Corporation for National and Community Service.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 97-146, FCC 97-219]

Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes adopting a policy of complete detariffing for all non-ILEC providers of interstate exchange access services because of the public interest benefits from complete detariffing, including eliminating the abuse of the filed rate doctrine, reducing administrative burdens on the Commission, and hindering price coordination afforded by tariffing.

DATES: Comments are due on or before August 18, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William Bailey, (202) 418-1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in CC Docket No. 97-146 adopted and released on June 19, 1997. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20037. The complete text may also be obtained through the

World Wide Web at <http://www.fcc.gov> or may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the NPRM to establish complete detariffing of non-ILEC providers of interstate exchange access services. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed on or before August 18, 1997.

Need for and Objectives of the Proposed Rule: The Commission, in compliance with Section 10(a) of the Telecommunications Act of 1996, proposes to adopt complete detariffing for non-ILEC providers of interstate exchange access services. Section 10 of the Communications Act of 1934, as amended (Communications Act), requires the Commission to forbear from tariff filing requirement if statutory criteria are met. We anticipate that the proposed rule will: reduce transaction costs and administrative burdens for providers, permit providers to make rapid responses to market conditions, and facilitate entry by new providers.

Legal Basis: As stated above, Section 10 of the Communications Act requires the Commission to forbear from applying a regulation if statutory criteria are met. The Commission has previously determined that complete detariffing is more consistent with the public interest than permissive detariffing in the context of interexchange services. The Commission seeks comment regarding whether this is also true with respect to interstate exchange access services.

Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply: Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. SBA has defined a small business

for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1500 employees.

Total Number of Telephone

Companies Affected: The proposals in the NPRM would have an impact on a substantial number of small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year. This number contains a variety of different category of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not independently owned and operated.

Local Exchange Carriers: Neither this agency nor SBA has developed a definition of small providers of local exchange service (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange service. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. We conclude that there are fewer than 1,347 small incumbent LECs that may be affected by the proposals in this Report and Order.

Competitive Access Providers: Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that