

intends to work with the State and Local Government Advisory Committees and with representatives of the industry to consider these issues.

#### Filing Procedures

4. Pursuant to 47 CFR 1.415, 1.419, 1.430, interested parties may file comments on or before August 13, 1999, and reply comments on or before September 3, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

5. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

6. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

7. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, S.W., CY-B400, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. 20554.

8. Comments and reply comments must include a short and concise summary of the substantive arguments

raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

Federal Communications Commission.

**William F. Caton,**

*Deputy, Secretary.*

[FR Doc. 99-19633 Filed 7-30-99; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[CC Docket No. 96-98; FCC 99-141]

### Promotion of Competitive Networks in Local Telecommunications Markets

**AGENCY:** Federal Communications Commission.

**ACTION:** Third Further Notice of Proposed Rulemaking.

**SUMMARY:** In this *Third Further Notice of Proposed Rulemaking*, the Commission seeks comment on a proposed interpretation of Section 224 of the Communications Act in order to facilitate the development of competitive telecommunications networks that will provide consumers with alternatives to services provided by the incumbent wireline local exchange carriers (LECs). In particular, the Commission seeks comment on the provision of reasonable and nondiscriminatory access to rights-of-way and riser conduit on private premises that are under the ownership or control of LECs or other utilities. A companion *Notice of Proposed Rulemaking* and a *Notice of Inquiry* are summarized elsewhere in this issue of the **Federal Register**.

**DATES:** Comments are due August 13, 1999; Reply comments are due September 3, 1999.

**ADDRESSES:** Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW-A325; Washington, DC 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/>

[ecfs.html](http://www.fcc.gov/e-file/)>. See **SUPPLEMENTARY INFORMATION** for additional information about paper and electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Jeff Steinberg at (202) 418-0896 or Joel Taubenblatt at (202) 418-1513 (Wireless Telecommunications Bureau).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98* (the "Notice"), FCC 99-141, adopted June 10, 1999 and released July 7, 1999. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 445 12th Street, S.W., CY-B400, Washington, DC 20554. The document is also available via the Internet at <<http://www.fcc.gov/Bureaus/Wireless/Orders/1999/index.html>>.

### Introduction

1. This Notice is part of a larger item that seeks comments and initiates an inquiry in order to further the Commission's ongoing efforts to promote facilities-based competition in the local telephone market. The larger item addresses several issues that are not squarely before the Commission in pending proceedings. In particular, this Notice addresses access by telecommunications and cable service providers to rights-of-way and riser conduit on private premises that are owned or controlled by LECs or other utilities.

### Background

2. In the Telecommunications Act of 1996, *codified at* 47 U.S.C. 151 *et seq.*, Congress included provisions intended to facilitate competition with the incumbent LECs through three entry strategies: resale of the incumbent LEC's services, leasing of unbundled network elements, and use of a new entrant's own facilities. To date, the Commission's efforts to facilitate local competition pursuant to these provisions of the Act have generally encompassed all three of these means of entry. Carriers who provide service by any of the three means of competitive entry have the potential to bring many of the benefits of competition to local exchange markets, and the Commission recognizes it should continue to facilitate competitive entry by all means. However, in the long term, the most substantial benefits to consumers will be achieved through facilities-based

competition. Only facilities-based competitors can break down the incumbent LECs' bottleneck control over local networks and provide services without having to rely on their rivals for critical components of their offerings. Moreover, only facilities-based competition can fully unleash competing providers' abilities and incentives to innovate, both technologically and in service development, packaging, and pricing.

### Discussion

3. In particular, this Notice seeks comment and makes tentative conclusions regarding a Petition for Reconsideration filed by WinStar of the *Local Competition First Report and Order* concerning section 224 of the Communications Act. See 61 FR 45476 (August 29, 1996); 11 FCC Rcd 15499; 47 U.S.C. 224. The Notice tentatively concludes that section 224 encompasses access to locations on private property, including end user premises, where a utility has established ownership or control of a right-of-way. The Notice also tentatively concludes that section 224 includes locations on a utility's own property that are used by the utility in the manner of a right-of-way in connection with the utility's distribution network. In addition, the Notice tentatively concludes that a utility must afford access consistent with section 224 to riser conduit that it may own or control. At the same time, the Notice tentatively reaffirms the Commission's prior determination that section 224 does not require a utility to afford access to all of its real property, such as the roof of its corporate office, unless that property constitutes a pole, duct, conduit, or right-of-way. The Notice states the Commission's tentative conclusion that these interpretations of section 224 are consistent with the plain meaning of the statute. The Notice requests comment on these interpretations and on several issues related to the implementation of these interpretations, including what sets of facts would establish utility ownership or control.

### Filing Procedures

4. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before August 13, 1999, and reply comments on or before September 3, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

5. Comments filed through the ECFS can be sent as an electronic file via the

Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

6. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW-A325, Washington, DC 20554.

7. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW., CY-B400, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554.

8. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

### Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on

small entities of the policies and rules proposed in this Third Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of this Third Further Notice of Proposed Rulemaking, as set forth in the Filing Procedures section above, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Third Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.

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

10. We are issuing this Third Further Notice of Proposed Rulemaking to seek comment on proposals to facilitate competition with the incumbent local exchange carriers (LECs) by competitors who use their own end-to-end facilities. Extensive facilities-based competition will provide consumers with a choice of telecommunications providers that will compete to offer traditional, voice-grade telephone service, as well as high-speed data and other advanced services, at reasonable prices and with reasonable terms and conditions—a major goal of the Telecommunications Act of 1996. We particularly expect this proceeding to further the availability of competition to the many consumers and businesses that are located in multiple tenant environments, such as apartment and office buildings.

11. Specifically, this Third Further Notice of Proposed Rulemaking seeks comment on the following issue: the tentative conclusion that, to the extent that LECs or other utilities own or control rooftop and other rights-of-way or riser conduit in multiple tenant environments, 47 U.S.C. 224 requires that they permit competing providers access to such rights-of-way or conduit under just, reasonable and nondiscriminatory rates, terms, and conditions.

### II. Legal Basis

12. The potential actions on which comment is sought in this Third Further Notice of Proposed Rulemaking would be authorized under sections 1, 2(a), 4(i), 4(j), 201(b), 224, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 154(j), 201(b), 224, 303(r), and 332, and 47 CFR 1.411 and 1.412.

### III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

13. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). For many of the entities described below, the SBA has defined small business categories through Standard Industrial Classification ("SIC") codes.

14. This Third Further Notice of Proposed Rulemaking could result in rule changes that, if adopted, would impose requirements on local exchange carriers and other utilities. To assist the Commission in analyzing the total number of potentially affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from this Third Further Notice of Proposed Rulemaking.

#### *a. Local Exchange Carriers*

15. The proposal on which comment is sought in this Third Further Notice of Proposed Rulemaking, if adopted, would affect small LECs. Neither the Commission nor the SBA has developed a small business definition specifically for small LECs. The closest applicable definition under the SBA rules is for those telephone communications companies that are not radiotelephone (wireless) companies. The SBA has defined establishments engaged in providing "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. According to November 1997 Telecommunications Industry Revenue data, 1,371 carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or

have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small incumbent LECs that may be affected by the potential actions discussed in this Third Further Notice of Proposed Rulemaking, if adopted.

16. Above, we have included smaller incumbent LECs in our analysis. Although some incumbent LECs may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. 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 regulatory flexibility analysis purposes, we will separately consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."

#### *b. Other Utilities*

17. The proposal in this Third Further Notice of Proposed Rulemaking with respect to 47 U.S.C. 224, if adopted, would affect utilities other than LECs. Section 224 defines a "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State." The Commission anticipates that, to the extent its section 224 proposal affects non-LEC utilities, the effect would be concentrated on electric utilities.

(1) Electric Utilities (SIC 4911, 4931 and 4939)

18. Electric Services (SIC 4911). The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1,379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues do not exceed five million dollars. The

Census Bureau reports that 447 of the 1,379 firms listed had total revenues below five million dollars in 1992.

19. Electric and Other Services Combined (SIC 4931). The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars in 1992.

20. Combination Utilities, Not Elsewhere Classified (SIC 4939). The SBA defines this type of utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars in 1992.

(2) Gas Production and Distribution (SIC 4922, 4923, 4924, 4925 and 4932)

21. Natural Gas Transmission (SIC 4922). The SBA's definition of a natural gas transmitter is an entity that is engaged in the transmission and storage of natural gas. The Census Bureau reports that a total of 144 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small natural gas transmitter is an entity whose gross revenues do not exceed five million dollars. The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars in 1992.

22. Natural Gas Transmission and Distribution (SIC 4923). The SBA has classified this type of entity as a utility that transmits and distributes natural gas for sale. The Census Bureau reports that a total of 126 such entities were in operation for at least one year at the end of 1992. The SBA's definition of a small natural gas transmitter and distributor is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars in 1992.

23. Natural Gas Distribution (SIC 4924). The SBA defines a natural gas distributor as an entity that distributes natural gas for sale. The Census Bureau

reports that a total of 478 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small natural gas distributor is an entity whose gross revenues do not exceed five million dollars. The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars in 1992.

24. Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution (SIC 4925). The SBA has classified this type of entity as a utility that engages in the manufacturing and/or distribution of the sale of gas. These mixtures may include natural gas. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small mixed, manufactured or liquefied petroleum gas producer or distributor is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars in 1992.

25. Gas and Other Services Combined (SIC 4932). The SBA has classified this entity as a gas company whose business is less than 95% gas, in combination with other services. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small gas and other services combined utility is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars in 1992.

(3) Water Supply (SIC 4941)

26. The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use. The Census Bureau reports that a total of 3,169 water utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small water utility is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 3,065 of the 3,169 firms listed had total revenues below five million dollars in 1992.

(4) Sanitary Systems (SIC 4952, 4953 and 4959)

27. Sewerage Systems (SIC 4952). The SBA defines a sewage firm as a utility whose business is the collection and disposal of waste using sewage systems. The Census Bureau reports that a total of 410 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sewerage system is a firm whose gross revenues did not exceed five million

dollars. The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars in 1992.

28. Refuse Systems (SIC 4953). The SBA defines a firm in the business of refuse as an establishment whose business is the collection and disposal of refuse "by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials." The Census Bureau reports that a total of 2,287 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small refuse system is a firm whose gross revenues do not exceed six million dollars. The Census Bureau reported that 1,908 of the 2,287 firms listed had total revenues below six million dollars in 1992.

29. Sanitary Services, Not Elsewhere Classified (SIC 4959). The SBA defines these firms as engaged in sanitary services. The Census Bureau reports that a total of 1,214 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sanitary service firm's gross revenues do not exceed five million dollars. The Census Bureau reported that 1,173 of the 1,214 firms listed had total revenues below five million dollars in 1992.

(5) Steam and Air Conditioning Supply (SIC 4961)

30. The SBA defines a steam and air-conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air. The Census Bureau reports that a total of 55 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a steam and air conditioning supply utility is a firm whose gross revenues do not exceed nine million dollars. The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars in 1992.

(6) Irrigation Systems (SIC 4971)

31. The SBA defines irrigation systems as firms who operate water supply systems for the purpose of irrigation. The Census Bureau reports that a total of 297 firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small irrigation service is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars in 1992.

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

32. This Third Further Notice of Proposed Rulemaking proposes no additional reporting, recordkeeping or other compliance measures.

#### V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. This Third Further Notice of Proposed Rulemaking seeks comment on how the proposals set forth could impact regulated entities, including small entities. For example, we seek comment on whether an overly broad construction of utility ownership or control would impose unreasonable burdens on building owners, including small building owners, or compromise their ability to ensure the safe use of rights-of-way or conduit, or engender other practical difficulties. Commenters are invited to address the economic impact of all of our proposals on small entities and offer any alternatives.

#### VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

34. None.

#### List of Subjects in 47 CFR Part 1

Communications common carriers, Telecommunications.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 99-19634 Filed 7-30-99; 8:45 am]

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#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 1, 51, 68, 76

[WT Docket No. 99-217; FCC 99-141]

#### Promotion of Competitive Networks in Local Telecommunications Markets

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this *Notice of Proposed Rulemaking*, the Commission initiates a proceeding intended to facilitate the development of competitive telecommunications networks that will provide consumers with alternatives to services provided by the incumbent wireline local exchange carriers (LECs). In particular, the Commission seeks comment on the following issues: the provision of reasonable and nondiscriminatory access to rights-of-