§ 435.1007 Categorically needy, medically needy, and qualified Medicare beneficiaries.

* * * * *

(b) Except as provided in paragraphs (c) and (d) of this section, FFP is not available in State expenditures for individuals (including the medically needy) whose annual income after deductions specified in § 435.831(a) and (c) exceeds the following amounts, rounded to the next higher multiple of $100.

* * * * *

(e) FFP is not available in expenditures for services provided to categorically needy and medically needy recipients subject to the FFP limits if their annual income, after the cash assistance income deductions and any income disregards in the State plan authorized under section 1902(r)(2) of the Act are applied, exceeds the 133⅓ percent limitation described under paragraphs (b), (c), and (d) of this section.

(f) A State may use the less restrictive income methodologies included under its State plan as authorized under § 435.601 in determining whether a family's income exceeds the limitation described in paragraph (b) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 4, 2001.

Robert A. Berenson, M.D.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: January 4, 2001.

Donna E. Shalala,

Secretary.

[FR Doc. 01–666 Filed 1–18–01; 11:49 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 64 and 68

[WT Docket No. 99–217; CC Docket No. 96–98; CC Docket No. 88–57; FCC 00–366]

Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission takes actions to further competition in local communications markets by ensuring that competing telecommunications providers are able to provide services to customers in multiple tenant environments (MTEs). The actions that the Commission takes in this item will reduce the likelihood that incumbent local exchange carriers (LECs) can obstruct their competitors' access to MTEs, as well as address particular potentially anticompetitive actions by premises owners and other third parties.

DATES: The rule changes to 47 CFR 64.2500, 64.2501, and 64.2502, shall become effective March 12, 2001. The rule changes to 47 CFR 1.4000 and the rule changes amending the definition of the term ''demarcation point'' in 47 CFR 68.3 contain an information collection requirement that has not yet been approved by OMB; the FCC will publish a document in the **Federal Register** announcing the effective date of these rule changes. Comments from the public, OMB, and other agencies on the information collections contained in this document are due March 12, 2001.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lauren Van Wazer at (202) 418–0030 or Joel Taubenblatt at (202) 418–1513 (Wireless Telecommunications Bureau). For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the First Report and Order in WT Docket No. 99–217, the Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96–98, and the Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88–57 (collectively, the ''Order''), FCC 00–366, adopted October 12, 2000 and released October 25, 2000. This summary also reflects errata issued in this proceeding subsequent to the release of this Order. The Commission seeks further comments on the issues in this proceeding in a Further Notice of Proposed Rulemaking, available at the addresses listed below and summarized separately in the **Federal Register**. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 445 12th Street, SW., CY–B400, Washington, D.C. 20554. This document is also available via the Internet at *http://fcc.gov/Bureaus/Wireless/Orders/2000/fcc00366.pdf.*

Paperwork Reduction Act

This Order contains a new information collection as described in Section D of the Final Regulatory Flexibility Analysis set forth below. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, Office of Management and Budget (OMB), and other federal agencies to comment on the information collection(s) contained in this Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. It will be submitted to the OMB for review under section 3507(d) of the PRA. Public, OMB, and other agency comments are due March 12, 2001. Comments should address: (a) Whether the new 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.

A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

OMB Control Number: 3060–XXXX.

Title: Promotion of Competitive Networks in Local Telecommunications Markets; Wireless Communications Association International, Inc. Petition for Rulemaking to Amend section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning

Connection of Simple Inside Wiring to the Telephone Network

Form No.: NA.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 5983.

Estimated Time per Response: .5 hrs. for the first information collection, 10 hrs. for the second information collection.

Total Annual Burden: 571,350 hrs.

Total Annual Costs: $11,427,000.

Needs and Uses: The first information collection relates to the revisions of the Commission's demarcation point rules, 47 CFR 68.3. Under these revisions, the LEC shall make available information on the location of the demarcation point within ten business days of a request from the premises owner. In addition, at the time of installation, the LEC shall fully inform the premises owner of its options and rights regarding the placement of the demarcation point or points. The availability of this information will facilitate efficient interaction between premises owners and LECs regarding the placement of the demarcation point, which marks the end of wiring under control of the LEC and the beginning of wiring under the control of the premises owner or subscriber. The demarcation point is a critical point of interconnection where competitive LECs can gain access to the inside wiring of the building to provide service to customers in the building.

The second information collection relates to the revisions of the Commission's rules on Over-the-Air Reception Devices, 47 CFR 1.4000. Under these revisions, as a condition of invoking protection under 47 CFR 1.4000 from government, landlord, and association restrictions, a licensee must ensure that subscriber antennas are labeled to give notice of potential radiofrequency safety hazards of these antennas. Labeling information should include minimum separation distances required between users and radiating antennas to meet the Commission's radiofrequency exposure guidelines. Labels should also include reference to the Commission's applicable radiofrequency exposure guidelines and should use the ANSI-specified warning symbol for radiofrequency exposure. In addition, the instruction manuals and other information accompanying subscriber transceivers should include a full explanation of the labels, as well as a reference to the applicable Commission radiofrequency exposure guidelines.

Synopsis of Report and Order

1. In this document, the Commission took action furthering its ongoing efforts under the Telecommunications Act of 1996 to foster competition in local communications markets. The Commission implemented measures to enhance the ability of competing telecommunications providers to provide services to customers in residential and commercial buildings or other MTEs.

Discussion

2. In the Notice of Proposed Rulemaking in WT Docket No. 99–217, 64 FR 41887, August 2, 1999, and a Third Further Notice of Proposed Rulemking in CC Docket No. 96–98, 64 FR 41884, August 2, 1999 (together, ''Competitive Networks NPRM''), the Commission requested comment on the ability of competitive telecommunications providers to access MTEs and on a variety of potential measures to improve such access. Based on the extensive record compiled in response to the Competitive Networks NPRM, the Commission adopts the following four measures to remove obstacles to competitive access in MTEs:

- First, the Commission forbids telecommunications carriers from entering into contracts to serve commercial properties that restrict or effectively restrict the property owner's ability to permit entry by other carriers.
- Second, in order to reduce competitive carriers' dependence on the incumbent LECs to gain access to on-premises wiring, while at the same time recognizing the varied needs of carriers and building owners, the Commission establishes procedures to facilitate moving the demarcation point to the minimum point of entry (MPOE) at the building owner's request, and requires incumbent LECs to timely disclose the location of existing demarcation points where they are not located at the MPOE.
- Third, the Commission determines that under Section 224 of the Communications Act, utilities, including LECs, must afford telecommunications carriers and cable service providers reasonable and nondiscriminatory access to conduits and rights-of-way located in customer buildings and campuses, to the extent such conduits and rights-of-way are owned or controlled by the utility.
- Fourth, the Commission extends to antennas that receive and transmit telecommunications and other fixed wireless signals its existing prohibition of restrictions that impair the installation, maintenance or use of certain video antennas on property within the exclusive use or control of the antenna user, where the user has a direct or indirect ownership or leasehold interest in the property.

3. Contemporaneous with this document, the Commission is publishing a Further Notice of Proposed Rulemaking that seeks comment on several potential actions related to competition in MTEs. In addition, subsequent to this document, the Commission will publish a Report and Order (FCC 00–400) that steamlines and privatizes many of the functions in part 68 of the Commission's rules and, in connection with this streamlining, makes a nonsubstantive amendment to the part 68 demarcation point definition set forth.

Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in WT Docket No. 99–217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98, released July 7, 1999 (Competitive Networks NPRM).[2] The Commission sought written public comment on the proposals in the Competitive Networks NPRM, including comment on the IRFA. The comments received are discussed below. In addition, an IRFA was incorporated in the Second Further Notice of Proposed Rulemaking in CC Docket No. 88–57 (1997 Demarcation Point Order on Reconsideration).[3] This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

A. Need for, and Objectives of, the Rules

4. In this Competitive Networks First Report and Order,[5] the Commission

[1] See 5 U.S.C. 603. The FRA, see 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] Promotion of Competitive Networks in Local Telecommunications Markets, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99–217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98, 14 FCC Red 12673, 12723–12734 (1999) (Competitive Networks NPRM).

[3] Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, Order on Reconsideration, Second Report and order and Second Further Notice of proposed Rulemaking, CC Docket No. 88–57, 12 FCC Red 11897, 11934–39 (1997) (1997 Demarcation Point Order on Reconsideration).

[4] See 5 U.S.C. 604.

[5] Promotion of Competitive Networks in Local Telecommunications Markets. First Report and Order, WT Docket No. 99–217, FCC 00–366

Continued

furthers its ongoing efforts under the Telecommunications Act of 1996[6] to foster competition in local communications markets by implementing measures to ensure that competing telecommunications providers are able to provide services to customers in multiple tenant environments (MTEs). MTEs include apartment buildings, office buildings, office parks, shopping centers, and manufactured housing communities. Based on the extensive record compiled in response to the Competitive Networks NPRM, the Commission adopts several measures to remove obstacles to competitive access in this important portion of the telecommunications market. Specifically the Commission: (1) Prohibits carriers from entering into contracts in commercial buildings that prevent access by competing carriers; (2) clarifies its demarcation point rules[7] governing control of in-building wiring and facilitates exercise of building owner options regarding that wiring; (3) concludes that the access mandated by section 224 of the Communications Act (the ''Pole Attachments Act'')[8] includes access to poles, ducts, conduits or rights-of-way that are owned or controlled by a utility within MTEs; and (4) concludes that tenants in MTEs should have the ability to place antennas one meter or less in diameter used to receive or transmit any fixed wireless service in areas within their exclusive use or control, and prohibits most restrictions on their ability to do so by extending the Commission's rules governing Over-the-Air Reception Devices (OTARDs).[9]

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. Comments in response to the Competitive Networks NPRM IRFA were filed by the Community Associations Institute, *et al.* (CAI),[10] the National Association of Counties, *et al.* (NACO),[11] the Real Access Alliance (RAA),[12] and the Office of Advocacy of the U.S. Small Business Administration (SBA).[13]

6. CAI states that community associations (*i.e.,* condominiums, cooperatives and planned communities) would incur undue expense and disruptions if the Commission provides telecommunications carriers so-called ''forced access'' to association property.[14] Similarly, RAA states that the Commission's ''proposals will interfere with the ability of landlords to insure compliance with safety codes; provide for the safety of tenants, residents, and visitors; coordinate among tenants and service providers; and manage limited physical space.''[15] CAI requests that community associations be exempted from any ''forced access'' rules adopted by the Commission,[16] while RAA requests that all affected ''small businesses'' be exempted.[17] RAA also states that the Competitive Networks NPRM should be withdrawn and reissued with a revised IRFA.[18]

7. The actions taken in the Competitive Networks First Report and Order today do not impair the authority of property owners or managers, including community associations, under state law to exclude telecommunications carriers from their property.[19] Rather, the Competitive Networks First Report and Order makes clear that ''the right of access granted under section 224 lies only against utilities,''[20] as defined in section 224(a)(1) of the Act.[21] We also note that our authorization of small antennas for the provision of non-video services is limited to antennas situated on property under the control of a community association member rather than common property of the association, and therefore will not impose undue burdens or expense on community associations or small building owners.[22] CAI also states that prohibiting exclusive telecommunications contracts would adversely impact community associations.[23] The Competitive Networks First Report and Order does not prohibit such contracts for residential properties.[24] Accordingly, even assuming that such a prohibition would significantly impact community associations, no such impact will result from the actions taken in the Competitive Networks First Report and Order today.[25]

8. In its comments filed August 27, 1999, NACO states that the Commission's proposals ''for building owners and managers represent the federalizing of what is currently a growing local market in site leasing.''[26] We have deferred to the Competitive Networks Further Notice of Proposed Rulemaking (FNPRM) the issue of whether the Commission should impose a nondiscriminatory access requirement on building owners and managers.[27] NACO also states that ''[l]ocal communities would be * * * deprived of a revenue stream that could reduce local tax burdens * * *.''[28] In later filed comments, NACO reiterates its concern over ''the impact of lost right-of-way and tax revenues and the impact on infrastructure of loss of management control over the public right of way.''[29] Although we sought comment on issues related to access to public rights-of-way and franchise taxes in the Competitive Networks Notice of Inquiry, we take no action in this regard today.

9. SBA states that the IRFA ''inappropriately excludes small incumbent LECs from the definition of small business,'' and requests that the Commission reconcile its definition of small incumbent LEC with SBA's definition.[30] SBA states that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[31] In the

(adopted Oct. 12, 2000) (Competitive Networks First Report and Order)

[6] Telecommunications Act of 1996, Public law 104–104, 110 Stat. 56 codified at 47 U.S.C. 151 *et seq.* (1996 Act). The 1996 Act amended the Communications Act of 1934 (the ''Communications Act'' of the ''Act'' or the ''Act'').

[7] See 47 CFR 68.3

[8] 47 U.S.C. 224.

[9] See 47 CFR 1.4000.

[10] CAI IRFA Response (filed Aug 27, 1999).

[11] NACO IRFA Comments (filed Aug. 27, 1999) and NACO Comments (filed Oct. 12, 1999).

[12] RAA Joint Regulatory Flexibility Act Comments (filed Aug. 27, 1999).

[13] SBA Reply Comments (filed Sept. 10, 1999).

[14] CAI IRFA Response at 6–14.

[15] RAA Joint Regulatory Flexibility Act Comments at 7.

[16] CAI IRFA Response at 16–17.

[17] RAA Joint Regulatory Flexibility Act Comments at 8.

[18] *Id.* at 8–9.

[19] See Competitive Networks First Report and order, at paragraph 76 (''Section 224 was not intended to override whatever authority or control an MTE owners may otherwise retain under the terms of its agreements and state law.'').

[20] *Id.*

[21] 47 U.S.C. 224(a)(1).

[22] See Competitive Networks First Report and order, Section IV.E., *supra.*

[23] CAI IRFA Response at 14–15 (filed August 27, 1999).

[24] Competitive Networks First Report and Order, at paragraph 27.

[25] In Section V.A. of the Competitive Networks FNPRM, we seek comment on extending the prohibition on exclusive contracts to residential MTEs. Issues regarding the potential impact of such an action on small entities, including community associations, are discussed in the Competitive Networks FNPRM IRFA, *infra.*

[26] NACO IRFA Comments at 3 (filed Aug. 27, 1999).

[27] Competitive Networks FNPRM, Section V.A., *supra.*

[28] NACO IRFA Comments at 3 (filed Aug. 27, 1999).

[29] NACO Comments at 48 (filed Oct. 12, 1999).

[30] SBA Reply Comments at 3–4. (filed Sept. 10, 1999).

[31] *Id.* at 4. The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations

Competitive Networks NPRM IRFA, we determined that, for the purposes of the IRFA, we would use the term ''small incumbent LECs'' to refer to incumbent LECs that might be defined by the SBA as small business concerns,[32] and would explicitly include small incumbent LECs in the analysis. In this present FRFA, *infra,* we have included small incumbent LECs within the definition of small business.

10. SBA and RAA separately state that the IRFA did not comply with the RFA. NACO concurs with RAA's comments in this regard. SBA states that ''[t]he Commission does not adequately discuss any significant economic impact its access proposal may have on small business nor does it propose sufficient alternatives that might minimize this impact, as is required by the RFA.'' [33] The Commission's access proposal included two key elements: (1) A requirement that building owners provide reasonable and nondiscriminatory access to their premises; and (2) a requirement, under Section 224 of the Act, that utilities provide telecommunications carriers access to their poles, ducts, conducts, and rights-of-way within buildings. As noted above, we are deferring to the Competitive Networks FNPRM the issue of whether and, if so, the extent to which, the Commission should impose a nondiscriminatory access requirement on building owners.[34] With respect to the proposed implementation of Section 224, in the Competitive Networks NPRM, we inquired:

> 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.[35]

11. After a thorough review and analysis of the comments filed on our Section 224 proposal, we have determined that a broad definition of utility ownership or control would not best serve the public interest. Rather, in order to minimize the impact of our proposal on utilities (and the buildings that they serve) that must provide access to telecommunications carriers pursuant to section 224, we find that ''state law determines whether, and the extent to which, utility ownership or control of a right-of-way exists in any factual situation within the meaning of section 224.'' [36] The Competitive Networks First Report and Order, moreover, in no way impairs the authority under state law of building owners, including small building owners, to exclude telecommunications carriers from their property.[37]

12. In addition, we note that in the Competitive Networks NPRM IRFA we discussed certain alternatives that might have lessened the possible economic input on small entities. We stated:

> [W]ith respect to our Section 224 proposal, 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. In addition, with respect to our inquiry into building owner obligations, we seek comment on whether we should limit the scope of any building owner obligation in order to avoid imposing unreasonable regulatory burden on building owners, and we suggest that a potential rule could exempt buildings that house fewer than a certain number of tenants or are under a certain size.[38]

This discussion of alternatives included cross-references to the text of the Competitive Networks NPRM, to assist the reader. We note that the final rules that we adopt here will benefit small telecommunications carriers by fostering facilities-based competition. We also anticipate that our final rules will benefit small building owners and their tenants, by ensuring that utilities cannot block access to their rights-of-way.

13. SBA states that, while we suggested some alternatives to assist small entities in the IRFA, on the whole our efforts were ''inadequate.'' SBA states that a broader analysis was required, directed not only toward the alternatives described in the above paragraph but also toward alternatives for ''small LECs and the many other small businesses listed in the IRFA.'' [39] We find that we have met the requirements of the RFA. We chose reasonable alternatives to discuss, and did not discuss alternatives for every affected entity where it would not have seemed reasonable or, perhaps, where it simply did not occur to us. We believe that the RFA requires a good faith effort on our part, but it does not require a discussion of a minimum of four alternatives [40] for each of the possibly affected entities. As noted above, we specifically discussed one definitional issue and one possible exception, to assist small entities. We also sought comment from small entities on other issues throughout the Competitive Networks NPRM and IRFA. We appreciate the comments supplied by SBA and others as a result, and have considered them in the Competitive Networks First Report and Order and this IRFA.

14. Finally, RAA contends that the IRFA provided inadequate notice as a matter of law.[41] We note that the IRFA was sufficient to generate comments from representatives of the small business community and that the record demonstrates that the IRFA met the objectives of the RFA. Delaying issuance of final rules at this time would not, therefore, advance those objectives. The IRFA provided sufficient information so that the public could react to the Commission's proposal in the Competitive Networks NPRM in an informed manner. We note that, pursuant to the Administrative Procedure Act,[42] the Commission must provide ample opportunity for the public to comment on proposed rules. In this proceeding, the Commission provided a 37-day filing period or initial comments, followed by a 21-day period for reply comments. The public thus had nearly two months to provide comments. In addition, numerous parties filed *ex parte* statements with the Commission during the course of the 13-month period after the formal comment period closed. More than 1000 comments and other submissions were filed in this proceeding. Many of the commenters, including small businesses, enthusiastically endorsed

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interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, *e.g.,* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[32] Competitive Networks NPRM IRFA, 14 FCC Rcd at 12726, paragraph 8. A ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 5 U.S.C. 601(3).

[33] SBA Reply Comments at 4 (filed Sept. 10, 1999).

[34] Competitive Networks FNPRM, Section V.A., supra. In the Competitive Networks NPRM IRFA, we inquired ''whether we should limit the scope of any building owner obligation * * * [and noted] that a potential rule could exempt buildings that housed fewer than a certain number of tenants or are under a certain size.'' Competitive Networks NPRM IRFA, 14 FCC Rcd at 12733, paragraph 31.

[35] Competitive Networks NPRM, 14 FCC Rcd at 12697, paragraph 47.

[36] Competitive Networks First, Report an Order, at paragraph 87.

[37] See *id.*

[38] Competitive Networks NPRM IRFA, 14 FCC, Red at 12733, paragraph 31 (internal citations omitted).

[39] SBA Reply Comments at 2.

[40] See *id.* at 5.

[41] RAA Joint Regulatory Flexibility Act Comments at 3–5.

[42] See 5 U.S.C. 553.

the proposals in the Competitive Networks NPRM.

C. Description and Estimate of the Number of Small Entities to which the Rules Will Apply

15. 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.'' [43] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [44] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[45] 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).[46] For many of the entities described below, we utilize SBA definitions of small business categories, which are based on Standard Industrial Classification (''SIC'') codes.

16. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [47] The SBA contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[48] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

17. This Competitive Networks First Report and Order adopts requirements that affect local exchange carriers and other utilities, building owners and managers, neighborhood associations, small governmental jurisdictions, cable operators, satellite providers, and wireless communications providers, as discussed below.

a. Local Exchange Carriers

18. The legal interpretation of section 224 set forth today, and the rule changes adopted today regarding exclusive contracts, demarcation point, and an extension of the OTARD rule will affect small LECs. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[49] 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.[50] According to recent Telecommunications Industry Revenue data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.[51] 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 1,348 providers of local exchange service are small entities or small incumbent LECs that may be affected by the rules and policies adopted today.

b. Other Utilities

19. The legal interpretation of section 224 set forth today will 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 legal interpretation of Section 224 affects non-LEC utilities, the effect would be concentrated on electric utilities.

(1) *Electric Utilities (SIC 4911, 4931 and 4939).* 20. *Electric Services (SIC 4911).* The SBA has developed a definition for small electric utility firms.[52] 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.[53] The Census Bureau reports that 447 of the 1,379 firms listed had total revenues below five million dollars in 1992.[54]

21. *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.[55] 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.[56] The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars in 1992.[57]

22. *Combination Utilities, Not Elsewhere Classified (SIC 4939).* The SBA defines this type of utility as providing a combination of electric, gas, and other services that are not otherwise classified.[58] The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end

[43] 5 U.S.C. 605(b).

[44] 5 U.S.C. 601(6).

[45] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[46] Small Business Act, 15 U.S.C. 632.

[47] 5 U.S.C. 601(3).

[48] SBA Reply Comments at 3–4. See also Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, *e.g.,* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[49] See 13 CFR 121.201, SIC Code 4813.

[50] 13 CFR 121.201. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (1987 SIC Manual).

[51] FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000)

[52] 1987 SIC Manual.

[53] 53 13 CFR 121.201.

[54] U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D (Bureau of Census data under contract to the Office of Advocacy of the SBA) (1992 Economic Census Industry and Enterprise Receipts Size Report).

[55] 1987 SIC Manual.

[56] 13 CFR 121.201.

[57] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[58] 1987 SIC Manual.

of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues do not exceed five million dollars.[59] The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars in 1992.[60]

(2) *Gas Production and Distribution (SIC 4922, 4923, 4924, 4925 and 4932).* 23. *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.[61] 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.[62] The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars in 1992.[63]

24. *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.[64] 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.[65] The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars in 1992.[66]

25. *Natural Gas Distribution (SIC 4924).* The SBA defines a natural gas distributor as an entity that distributes natural gas for sale.[67] 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.[68] The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars in 1992.[69]

26. *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.[70] 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.[71] The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars in 1992.[72]

27. *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.[73] 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.[74] The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars in 1992.[75]

(3) *Water Supply (SIC 4941).*

28. The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use.[76] 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.[77] The Census Bureau reported that 3,065 of the 3,169 firms listed had total revenues below five million dollars in 1992.[78]

(4) *Sanitary Systems (SIC 4952, 4953 & 4959).*

29. *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.[79] 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.[80] The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars in 1992.[81]

30. *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.''[82] 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.[83] The Census Bureau reported that 1,908 of the 2,287 firms listed had total revenues below six million dollars in 1992.[84]

31. *Sanitary Services, Not Elsewhere Classified (SIC 4959).* The SBA defines these firms as engaged in sanitary services.[85] 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.[86] The Census Bureau reported that 1,173 of the 1,214 firms listed had total revenues below five million dollars in 1992.[87]

(5) *Steam and Air Conditioning Supply (SIC 4961).* 32. The SBA defines a steam and air conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air.[88] 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.[89] The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars in 1992.[90]

(6) *Irrigation Systems (SIC 4971).* 33. The SBA defines irrigation systems as firms who operate water supply systems

[59] 13 CFR 121.201.

[60] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[61] 1987 SIC Manual.

[62] 13 CFR 121.201.

[63] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[64] 1987 SIC Manual.

[65] 65 13 CFR 121.201.

[66] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[67] 1987 SIC Manual.

[68] 13 CFR 121.201.

[69] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[70] 1987 SIC Manual.

[71] 13 CFR 121.201.

[72] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[73] 1987 SIC Manual.

[74] 13 CFR 121.201.

[75] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[76] 1987 SIC Manual.

[77] 13 CFR 121.201.

[78] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[79] 1987 SIC Manual.

[80] 13 CFR 121.201.

[81] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[82] 1987 SIC Manual.

[83] 13 CFR 121.201.

[84] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[85] 1987 SIC Manual.

[86] 13 CFR 121.201.

[87] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[88] 1987 SIC Manual.

[89] 13 CFR 121.201.

[90] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

for the purpose of irrigation.[91] 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.[92] The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars in 1992.[93]

c. Building Owners and Managers

34. The rule changes adopted today will affect multiple dwelling unit operators and real estate agents and managers.

(1) *Multiple Dwelling Unit Operators (SIC 6512, SIC 6513, SIC 6514).*

35. The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings, and dwellings other than apartment buildings, which include all such companies generating $5 million or less in revenue annually.[94] According to the Census Bureau, there were 26,960 operators of nonresidential buildings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992.[95] Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992.[96] The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

(2) *Real Estate Agents and Managers (SIC 6531).*

36. The SBA defines real estate agents and managers as establishments primarily engaged in renting, buying, selling, managing, and appraising real estate for others.[97] According to SBA's definition, a small real estate agent or manager is a firm whose revenues do not exceed 1.5 million dollars.[98]

d. Neighborhood Associations

37. The extension of the OTARD rules adopted today will affect neighborhood associations. The Regulatory Flexibility Act defines ''small organization'' as ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [99] This definition includes homeowner and condominium associations that operate as not-for-profit organizations. The Community Associations Institute estimates that there are 205,000 such associations.[100]

e. Municipalities

38. The extension of the OTARD rules adopted today will affect neighborhood associations. The term ''small governmental jurisdiction'' is defined as ''governments of * * * districts, with a population of less than 50,000.'' [101] As of 1992, there were approximately 85,006 governmental entities in the United States.[102] This number includes such entities as states, counties, cities, utility districts and school districts. Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566, or 96%, have populations of fewer than 50,000.[103] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,606 (96%) are small entities.

f. Cable Services or Systems

39. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[104] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[105]

40. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[106] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[107] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

41. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [108] The Commission has determined that there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[109] Based on available data, we find that the number of cable operators serving 666,900 subscribers or less totals 1,450.[110] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[111] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small

[91] 1987 SIC Manual.

[92] 13 CFR 121.201.

[93] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[94] 13 CFR 121.601 (SIC 6512, SIC 6513, SIC 6514).

[95] 1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report, Table 4, SIC 6512 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration) (1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report).

[96] 1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report, Table 4, SIC 6513.

[97] 1987 SIC Manual.

[98] 13 CFR 121.201.

[99] See 5 U.S.C. 601(4).

[100] CAI IRFA Response at 5 (filed Aug. 27, 1999).

[101] 5 U.S.C. 601(5).

[102] U.S. Department of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[103] *Id.*

[104] 13 CFR 121.201, SIC code 4841.

[105] **1992 Economic Census Industry and Enterprise Receipts Size Report,** Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[106] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[107] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[108] 47 U.S.C. 543(m)(2).

[109] 47 CFR 76.1403(b).

[110] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[111] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to Section 76.1403(b) of the Commission's Rules. See 47 CFR 76.1403(d).

cable operators under the definition in the Communications Act.

g. International Services

42. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[112] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[113] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million.[114] The Census report does not provide more precise data.

43. *International Broadcast Stations.* Commission records show that there are 20 international broadcast station licensees. We do not request or collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

44. *International Public Fixed Radio (Public and Control Stations).* There are 3 licensees in this service subject to payment of regulatory fees. We do not request or collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

45. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request or collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

46. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request or collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

47. *Mobile Satellite Earth Stations.* There are 11 licensees. We do not request or collect annual revenue information, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

48. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request or collect annual revenue information, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

49. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.''[115] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[116] As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that would be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

50. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

h. Multipoint Distribution Service (MDS)

51. MDS involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[117] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[118] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[119] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[120] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[121] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

i. Wireless Services

52. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[122] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[123] These regulations defining ''small entity'' in the context of broadband PCS auctions have been

[112] An exception is the Direct Broadcast Satellite (DBS) Service, *infra.*

[113] 13 CFR 120.121, SIC code 4899.

[114] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[115] 13 CFR 120.121, SIC code 4841.

[116] 13 CFR 121.201, SIC code 4841.

[117] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[118] 47 CFR 1.2110 (a)(1).

[119] Amendment of parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[120] 47 U.S.C. 309(j).

[121] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36–39.

[122] See Amendment of parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket 90–314, Report and Order, 11 FCC Rcd 7824, 7850–52, paragraphs 57–60 (1996) (*Cross Ownership Report & Order*); see also 47 CFR 24.720(b).

[123] Cross Ownership Report & Order, 11 FCC Rcd at 7852, paragraph 60.

approved by the SBA.[124] No small businesses 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 business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[125] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

53. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[126] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.[127] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Trends in Telephone Service data, 808 carriers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio Telephone (SMR) service, which are placed together in the data.[128] We do not have data specifying the number of these carriers that 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 cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 808 or fewer small cellular service carriers that may be affected by any regulations adopted pursuant to this proceeding.

54. *Fixed Microwave Services.* Microwave services include common carrier,[129] private-operational fixed,[130] and broadcast auxiliary radio services.[131] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.,* an entity with no more than 1,500 persons.[132] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

55. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[133] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[134] We will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons.[135] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

56. The Competitive Networks First Report and Order requires incumbent LECs to respond promptly to requests by building owners to identify the location of the demarcation point. The Competitive Networks First Report and Order holds that if an incumbent LEC fails to produce this information within ten business days of the request, the premises owner may presume the demarcation point to be located at the minimum point of entry (MPOE).[136] The Competitive Networks First Report and Order further requires that where LECs do not establish a practice of placing the demarcation point at the MPOE, they fully inform building owners, at the time of installation, of their options regarding placement.

57. The Competitive Networks First Report and Order holds that in order to further competition, a request by a property owner to relocate the demarcation point to the MPOE must be addressed by an incumbent LEC in a reasonably timely and fair manner, so as not to unduly delay or hinder competitive LEC access. The Competitive Networks First Report and Order therefore directs incumbent LECs to conclude negotiations with requesting building owners within 45 days of such a request.

58. In addition, the Competitive Networks First Report and Order requires, as a condition of invoking protection under the OTARD rule from government, landlord and association restrictions, that licensees ensure that subscriber antennas be labeled to give notice of potential radiofrequency safety hazards of antennas used for fixed wireless transmissions. Labeling information should include minimum separation distances required between users and radiating antennas to meet the Commission's radiofrequency exposure guidelines. Labels should also include reference to the Commission's applicable radiofrequency exposure guidelines. In addition, the instruction manuals and other information accompanying subscriber transceivers should include a full explanation of the labels, as well as a reference to the applicable Commission radiofrequency exposure guidelines.

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[124] See, *e.g.,* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84, paragraphs 114–20 (1994).

[125] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997).

[126] 13 CFR 121.201, SIC code 4812.

[127] 1992 Census, Series UC92–S–1, at Table 5, SIC code 4812.

[128] FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000).

[129] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[130] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[131] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[132] 13 CFR 121.201, SIC 4812.

[133] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[134] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[135] 13 CFR 121.201, SIC code 4812.

[136] The minimum point of entry is defined as ''either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings.'' 47 CFR 68.3 (definition of demarcation point).

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

59. The rule changes adopted in this Competitive Networks First Report and Order are intended to promote competition in local communications markets by implementing measures to ensure that competing telecommunications providers are able to provide services to customers in MTEs. The actions taken today will benefit consumers, telecommunications carriers, and building owners, including small entities.

60. In the Competitive Networks NPRM, we sought comment on seven proposals: (1) 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 MTEs, section 224 of the Act[137] requires that they permit competing providers access to such rights-of-way or conduit under just, reasonable and nondiscriminatory rates, terms, and conditions; (2) whether we should require incumbent LECs to make available to any requesting telecommunications carrier unbundled access to riser cable and wiring that they control within MTEs, subject to the Commission's future interpretation of the ''necessary'' and ''impair'' standards of section 251 of the Act;[138] (3) whether we should require building owners, who allow access to their premises to any telecommunications provider, to make comparable access available to all such providers on a nondiscriminatory basis; (4) whether we should forbid telecommunications service providers, under some or all circumstances, from entering into exclusive contracts with building owners, and abrogate any existing exclusive contracts between these parties; (5) whether we should modify our rules governing determination of the demarcation point between facilities controlled by the telephone company and by the landowner on multiple unit premises; (6) whether the rules governing access to cable home wiring for multichannel video program distribution should be extended to benefit providers of telecommunications services; and (7) whether we should adopt rules similar to those adopted in the video context under section 207 of the 1996 Act protecting the ability to place antennas to transmit and receive telecommunications signals and other signals that are not covered under section 207. After careful review and analysis of the voluminous record developed in response to the Competitive Networks NPRM, we take action on four proposals today.

61. First, we prohibit telecommunications service providers from entering into exclusive contracts to serve commercial buildings. In the Competitive Networks NPRM, we solicited comment on this proposal as an alternative to our proposal to require building owners to provide nondiscriminatory access to their premises to telecommunications providers.[139] As noted above, we received comment opposed to this second alternative. We have not adopted the latter proposal in the Competitive Networks First Report and Order; however, we do seek additional comment on it in the Competitive Networks FNPRM.[140] In the Competitive Networks NPRM, we also inquired whether we should abrogate existing exclusive contracts.[141] Based on the record in this proceeding, we have determined that abrogating exclusive contracts may interfere with the investment-backed expectations of the parties to such contracts, including small entities, and thus we defer consideration of this issue to the Competitive Networks FNPRM.[142] We also find that the record is not sufficiently developed to determine whether the prohibition on exclusive contracts should apply to residential MTEs,[143] and therefore defer this issue to the Competitive Networks FNPRM.[144] We note that there was widespread support in the record for prohibiting future exclusive contracts in commercial MTEs.[145] We also note our expectation that small entities, including small telecommunications carriers and small building owners, will benefit from the competitive telecommunications environment that the ban on exclusive contracts will foster.

62. Second, with respect to to modifying the Commission's demarcation point rules, we sought comment on, *inter alia*, establishing a uniform demarcation point at the minimum point of entry (MPOE) to multiple unit premises.[146] We have weighed the evidence in the record concerning this proposal carefully. We find that the potential financial burden of moving the demarcation point to the MPOE and the fact that it may hinder deployment of facilities by carriers, including small entities, which utilize unbundled local loops outweigh the potential benefits of adopting this proposal.[147] In the alternative, we take the following actions to promote access to telecommunications wiring by competing carriers, including small entities: (1) We clarify that the Commission's demarcation point rules govern the control of inside wiring and related facilities for purposes of competitive access, as well as the control of these facilities for purposes of installation and maintenance; (2) we require that incumbent LECs conclude negotiations with building owners to relocate the demarcation point to the MPOE within 45 days of the building owner's request; and (3) we require that incumbent LECs fulfill their duty to disclose the location of the demarcation point, where it is not located at the MPOE, within ten business days of a building owner's request.[148] Collectively, these actions ''will substantially reduce the potential for incumbent LECs to obstruct competitive access to MTEs,''[149] while imposing only minimal financial burdens. We expect that that many smaller carriers seeking competitive entry will benefit directly from these actions.

63. Third, we have adopted our proposal under section 224 of the Act[150] to require LECs and other utilities which own or control poles, ducts, conduits and other rights-of-way in MTEs, to permit competing providers access to such facilities under just, reasonable and nondiscriminatory rates, terms, and conditions. We anticipate that this action will benefit many small entities, including property owners and managers. We emphasize that our proposal as adopted will not impair the authority under state law, of property owners and managers to exclude telecommunications carriers from their

[137] 47 U.S.C. 224.

[138] 47 U.S.C. 251.

[139] Competitive Networks NPRM, 14 FCC Rcd at 12707, paragraph 64.

[140] See Competitive Networks FNPRM, Section V.A., supra.

[141] Competitive Networks NPRM, 14 FCC Rcd at 12707, paragraph 64.

[142] See Competitive Networks First Report and Order, at paragraph 36, and Competitive Networks FNPRM, Section V.A., supra.

[143] See Competitive Networks First Report and Order, at paragraph 33.

[144] See Competitive Networks FNPRM, Section V.B., supra.

[145] See, e.g., AT&T Comments at 26; Qwest Comments at 11; SBC Comments at 7; and Teligent Comments at 17–19.

[146] Competitive Networks NPRM, 14 FCC Rcd at paragraphs 67 and 68. The minimum point of entry is defined as ''either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings.'' 47 CFR 68.3 (definition of demarcation point).

[147] Competitive Networks First Report and Order, at paragraphs 52–53.

[148] See Competitive Networks First Report and Order, at paragraphs 54–57.

[149] *Id.*, at paragraph 58.

[150] 47 U.S.C. 224.

property.[151] Rather, building owners and managers, and their tenants, will benefit from our proposal because utilities, as defined in section 224(a)(1) of the Act,[152] will no longer have the unfettered ability to exclude telecommunications carriers from their poles, ducts, conduits, and defined rights-of way in MTEs. Telecommunications carriers, including small entities, will benefit from increased access to MTEs. We note that, although it did not file comments on the IRFA, the National League of Cities expressed concern that our proposed implementation of section 224 within buildings may preempt implementation or enforcement of state safety-related codes.[153] As we make clear in the Competitive Networks First Report and Order, ''our actions taken today are not intended to preempt, or impede, in any way the implementation or enforcement of state safety-related codes.'' [154]

64. Fourth, we are amending section 1.4000 of our rules (the ''OTARD rule'')[155] to protect the ability of customers to place antennas used for transmitting and receiving all forms of fixed wireless transmissions. Section 1.4000 currently prohibits any state or local law or regulation, private covenant, contract provision, lease provision, homeowners' association rule, or similar restriction that impairs the installation, maintenance, or use of certain antennas designed to receive video programming services on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property.

65. Currently, section 1.4000 prohibits restrictions that impair the installation, maintenance or use of: (1) Any antenna designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska; (2) any antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, and local multipoint distribution services, and that is one meter or less in diameter; (3) any antenna designed to receive television broadcast signals; or (4) any mast supporting an antenna receiving any video programming described in the section. For the purposes of section 1.4000, a law, regulation or restriction impairs installation, maintenance or use of an antenna if it unreasonably delays or prevents installation, maintenance or use, unreasonably increases the cost of installation, maintenance or use, or precludes reception of an acceptable quality signal. Section 1.4000 also includes provisions for waiver and declaratory ruling proceedings.

66. There is widespread support in the record for an extension of the OTARD rule to include all fixed wireless services.[156] Moreover, we believe that extending the OTARD rule to include all fixed wireless services is essential to meeting our obligation to promote the deployment of advanced telecommunications capability under Section 706(a) of the 1996 Act.[157] To the extent a restriction unreasonably limits a customer's ability to place antennas to receive communications services, that restriction may impede the development of advanced, competitive services.

67. The *Competitive Networks First Report and Order* underscores the policy rationale for amending the OTARD rule:

> [D]istinguishing in the protection afforded based on the services provided through an antenna produces irrational results. Precisely the same antennas may be used for video services, telecommunications, and internet access. Indeed, sometimes a single company offers different packages of services using the same type of antennas. Under our current rules, a customer ordering a telecommunications/video package would enjoy protection that a customer ordering a telecommunications-only package from the same company using the same antenna would not. Thus, we conclude that the current rules potentially distort markets by creating incentives to include video programming service in many service offerings even if it is not efficient or desired by the consumer.[158]

We do not anticipate that today's rule change will have a significant adverse economic impact on small entities. To the contrary, we expect that small communications carriers that previously were unable to serve customers in MTEs may now be able to do so as a result of our rule change. However, we emphasize that ''the action we take today does not confer a right as against the building owner in restricted or common use areas in commercial or residential buildings, like most rooftops.'' [159] Rather our extension of the OTARD rule to wireless services ''applies only to areas within the exclusive use or control of the antenna user and in which the antenna user has a direct or indirect ownership or leasehold interest.''[160]

68. We also note that any impact on small entities is mitigated by our preservation of the exceptions to the OTARD rule permitting certain restrictions for safety and historic preservation purposes. Restrictions that would otherwise be forbidden are permitted if they are necessary to achieve certain safety or historic preservation purposes, are no more burdensome than necessary to achieve their purpose, and meet certain other conditions set forth in the OTARD rule. Finally, to address any potential concerns regarding transmitting antennas, we have determined that ''[t]o the extent that local governments, associations, and property owners elect to require professional installation for transmitting antennas, the usual prohibition of such requirements under the OTARD rule will not apply.'' [161]

Report to Congress

The Commission will send a copy of the Competitive Networks First Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Competitive Networks First Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Competitive Networks First Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clauses

69. Pursuant to sections 1, 2(a), 4(j), 4(i), 7, 201, 202, 205, 221, 224, 251, 303, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 154(j), 157, 201, 202, 205, 221, 224, 251, 303, and 405, that this First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99–217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96–98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88–57 and the amendments to the Commission's rules set forth are ADOPTED.

70. Sections 64.2500, 64.2501, and 64.2502 of the Commission's rules, 47 CFR 64.2500, 64.2501, and 64.2502, set forth in the Rule Changes, *Shall Become*

[151] See Competitive Networks First Report and Order, at paragraph 87.

[152] 47 U.S.C. 224(a)(1).

[153] National League of Cities, et al. Petition for EIS at 21–24.

[154] Competitive Networks First Report and Order, at paragraph 84.

[155] 47 CFR 1.4000.

[156] See e.g., AT&T Comments; PCIA Comments; Fixed Wireless Communications Coalition Comments; and Teligent Comments.

[157] 47 U.S.C. 157 note.

[158] Competitive Networks First Report and Order, at paragraph 98.

[159] *Id.*, at paragraph 124.

[160] *Id.*, at paragraph 100.

[161] *Id.*, at paragraph 119.

Effective March 12, 2001. The rule changes to 47 CFR 1.4000 and the rule changes amending the definition of the term ''demarcation point'' in 47 CFR 68.3 contain an information collection requirement that has not yet been approved by OMB; the FCC will publish a document in the **Federal Register** announcing the effective date of these rule changes.

71. The motions to submit Further Reply Comments filed by Concerned Communities and Organizations and the Wireless Communications Association International *Are Granted.*

72. The Petition for Clarification and Reconsideration of the 1997 Demarcation Point Order filed by Bell Atlantic *Is Granted,* as discussed in section IV.C.

73. The Petition for Clarification and Reconsideration of the 1997 Demarcation Point Order filed by BellSouth *Is Denied,* as discussed in section IV.C.

74. The Petition for Reconsideration of the Local Competition First Report and Order filed by WinStar *Is Granted* to the extent discussed in section IV.D and otherwise *Is Denied.*

75. The Petition for Environmental Impact Statement filed by the National League of Cities, the National Association of Counties, the Michigan Municipal League, and the Texas Coalition of Cities for Utility Issues *Is Denied* as discussed in Section IV.E, except to the extent that the Petition concerns issues raised in the Notice of Inquiry portion of the Competitive Networks NPRM, which will be addressed separately at a later time.

76. The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this First Report and Order and Further Notice of Proposed Rulemaking, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Sections 603(a) and 604(b) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 603(a), 604(b).

List of Subjects

47 CFR Part 1

Communications common carriers, Telecommunications, Television.

47 CFR Part 64

Communications common carriers, Telecommunications, Telephone.

47 Part 68

Communications common carriers, Communications equipment, Telecommunications, Telephone.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Group.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 64, and 68 as follows:

PART 1—PRACTICE AND PROCEDURES

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309.

2. Revise Subpart S to read as follows:

Subpart S—Preemption of Restrictions That ''Impair'' the Ability to Receive Television Broadcast Signals, Direct Broadcast Satellite Services, or Multichannel Multipoint Distribution Services or the Ability To Receive or Transmit Fixed Wireless Communications Signals

Sec.

1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services, or multichannel multipoint distribution services and restrictions impairing reception or transmission of fixed wireless communications signals.

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services, or multichannel multipoint distribution services and restrictions impairing reception or transmission of fixed wireless communications signals.

(a)(1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulations, or any private covenant, contract provision, lease provision, homeowners' association rule or similar restriction, on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of:

(i) An antenna that is:

(A) Used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, and

(B) One meter or less in diameter or is located in Alaska;

(ii) An antenna that is:

(A) Used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, and

(B) That is one meter or less in diameter or diagonal measurement;

(iii) An antenna that is used to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

(a)(2) For purposes of this section, ''fixed wireless signals'' means any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Fixed wireless signals do not include, among other things, AM radio, FM radio, amateur (''HAM'') radio, Citizen's Band (CB) radio, and Digital Audio Radio Service (DARS) signals.

(a)(3) For purposes of this section, a law, regulation, or restriction impairs installation, maintenance, or use of an antenna if it:

(i) Unreasonably delays or prevents installation, maintenance, or use;

(ii) Unreasonably increases the cost of installation, maintenance, or use; or

(iii) Precludes reception or transmission of an acceptable quality signal.

(a)(4) Any fee or cost imposed on a user by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (d) or (e) of this section. In addition, except with respect to restrictions pertaining to safety and historic preservation as described in paragraph (b) of this section, if a proceeding is initiated pursuant to paragraph (d) or (e) of this section, the entity seeking to enforce the antenna restrictions in question must suspend all enforcement efforts pending completion of review. No attorney's fees shall be collected or assessed and no fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction. If a ruling is issued adverse to a user, the user shall be granted at least a 21-day grace period

in which to comply with the adverse ruling; and neither a fine nor a penalty may be collected from the user if the user complies with the adverse ruling during this grace period, unless the proponent of the restriction demonstrates, in the same proceeding which resulted in the adverse ruling, that the user's claim in the proceeding was frivolous.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if:

(1) It is necessary to accomplish a clearly defined, legitimate safety objective that is either stated in the text, preamble, or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve a prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance, or use of other modern appurtenances, devices, or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described in paragraphs (b)(1) or (b)(2) of this section.

(c) In the case of an antenna that is used to transmit fixed wireless signals, the provisions of this section shall apply only if a label is affixed to the antenna that:

(1) Provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and

(2) References the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310 of this chapter.

(d) Local governments or associations may apply to the Commission for a waiver of this section under § 1.3 of this chapter. Waiver requests must comply with the procedures in paragraphs (f) and (h) of this section and will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(e) Parties may petition the Commission for a declaratory ruling under § 1.2 of this chapter, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission must comply with the procedures in paragraphs (f) and (h) of this section and will be put on public notice. Any responsive pleadings in a Commission proceeding must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies in a Commission proceeding must be served on all parties and filed within 15 days thereafter.

(f) Copies of petitions for declaratory rulings and waivers must be served on interested parties, including parties against whom the petitioner seeks to enforce the restriction or parties whose restrictions the petitioner seeks to prohibit. A certificate of service stating on whom the petition was served must be filed with the petition. In addition, in a Commission proceeding brought by an association or a local government, constructive notice of the proceeding must be given to members of the association or to the citizens under the local government's jurisdiction. In a court proceeding brought by an association, an association must give constructive notice of the proceeding to its members. Where constructive notice is required, the petitioner or plaintiff must file with the Commission or the court overseeing the proceeding a copy of the constructive notice with a statement explaining where the notice was placed and why such placement was reasonable.

(g) In any proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance, or use of devices used for over-the-air reception of video programming services or devices used to receive or transmit fixed wireless signals shall be on the party that seeks to impose or maintain the restriction.

(h) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Copies of the petitions and related pleadings will be available for public inspection in the Reference Information Center, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Add Subpart Z to read as follows:

Subpart Z—Prohibition on Exclusive Telecommunications Contracts

Sec.

64.2500 Prohibited agreements.
64.2501 Scope of limitation.
64.2502 Effect of State law or regulation.

§ 64.2500 Prohibited agreements.

No common carrier shall enter into any contract, written or oral, that would in any way restrict the right of any commercial multiunit premises owner, or any agent or representative thereof, to permit any other common carrier to access and serve commercial tenants on that premises.

§ 64.2501 Scope of limitation.

For the purposes of this subpart, a multiunit premises is any contiguous area under common ownership or control that contains two or more distinct units. A commercial multiunit premises is any multiunit premises that is predominantly used for non-residential purposes, including for-profit, non-profit, and governmental uses. Nothing in this subpart shall be construed to forbid a common carrier from entering into an exclusive contract to serve only residential customers on any premises.

§ 64.2502 Effect of state law or regulation.

This subpart shall not preempt any state law or state regulation that requires a governmental entity to enter into a contract or understanding with a common carrier which would restrict such governmental entity's right to obtain telecommunications service from another common carrier.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

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

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).

2. Section 68.3 is amended by revising the definition of ''demarcation point'' to read as follows:

§ 68.3 Definitions.

* * * * *

Demarcation point: The point of demarcation and/or interconnection between telephone company communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises. Carrier-installed facilities at, or constituting, the demarcation point shall consist of wire or a jack conforming to subpart F of part 68 of the Commission's rules. ''Premises'' as used herein generally means a dwelling unit, other building or a legal unit of real property such as a lot on which a dwelling unit is located, as determined by the telephone company's reasonable and nondiscriminatory standard operating practices. The ''minimum point of entry'' as used herein shall be either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings. The telephone company's reasonable and nondiscriminatory standard operating practices shall determine which shall apply. The telephone company is not precluded from establishing reasonable classifications of multiunit premises for purposes of determining which shall apply. Multiunit premises include, but are not limited to, residential, commercial, shopping center and campus situations.

(a) *Single unit installations.* For single unit installations existing as of August 13, 1990, and installations installed after that date the demarcation point shall be a point within 30 cm (12 in) of the protector or, where there is no protector, within 30 cm (12 in) of where the telephone wire enters the customer's premises, or as close thereto as practicable.

(b) *Multiunit installations.* (1) In multiunit premises existing as of August 13, 1990, the demarcation point shall be determined in accordance with the local carrier's reasonable and non-discriminatory standard operating practices. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point twelve inches from where the wiring enters the customer's premises, or as close thereto as practicable.

(2) In multiunit premises in which wiring is installed, including major additions or rearrangements of wiring existing prior to that date, the telephone company may place the demarcation point at the minimum point of entry (MPOE). If the telephone company does not elect to establish a practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner shall determine the location of the demarcation point or points. The multiunit premises owner shall determine whether there shall be a single demarcation point location for all customers or separate such locations for each customer. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point 30 cm (12 in) from where the wiring enters the customer's premises, or as close thereto as practicable. At the time of installation, the telephone company shall fully inform the premises owner of its options and rights regarding the placement of the demarcation point or points and shall not attempt to unduly influence that decision for the purpose of obstructing competitive entry.

(3) In any multiunit premises where the demarcation point is not already at the MPOE, the telephone company must comply with a request from the premises owner to relocate the demarcation point to the MPOE. The telephone company must negotiate terms in good faith and complete the negotiations within forty-five days from said request. Premises owners may file complaints with the Commission for resolution of allegations of bad faith bargaining by telephone companies. See 47 U.S.C. 208; 47 CFR 1.720 through 1.736 (1999) of this chapter.

(4) The telephone company shall make available information on the location of the demarcation point within ten business days of a request from the premises owner. If the telephone company does not provide the information within that time, the premises owner may presume the demarcation point to be at the MPOE. Notwithstanding the provisions of 47 CFR 68.110(c), telephone companies must make this information freely available to the requesting premises owner.

(5) In multiunit premises with more than one customer, the premises owner may adopt a policy restricting a customer's access to wiring on the premises to only that wiring located in the customer's individual unit that serves only that particular customer.

* * * * *

[FR Doc. 01–843 Filed 1–10–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket Nos. 98–147, 98–11, 98–26, 98–32, 98–15, 98–78, 98–91; FCC 00–293]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission (FCC).

ACTION: Final Rule; denial of reconsideration.

SUMMARY: This document affirms on reconsideration the Commission's determination that section 706(a) of the Telecommunications Act of 1996 (1996 Act) does not constitute an independent grant of forbearance authority. This documents also affirms on reconsideration the requirement that incumbent local exchange carriers (LECs) must provide unbundled loops conditioned to carry advanced services, even if the incumbent is not itself providing such services.

FOR FURTHER INFORMATION CONTACT: William Kehoe, Special Counsel, Common Carrier Bureau, Policy and Program Planning Division, 202–418–1580. Further information also may be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CC Docket No. 98–147, FCC 00–293, adopted on August 3, 2000, and released August 4, 2000. The complete text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 Twelfth Street, SW. Washington,