

Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202-418-0214, or via Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION: This proposed rulemaking, 69 FR 63489, November 2, 2004, concerns a decision to provide additional twenty megahertz of spectrum that can be used to offer a variety of broadband and advanced wireless services (AWS), potentially including "third generation" (3G) wireless services, the Commission ask for public comment on licensing, technical, and operational rules to govern the use of the 1915-1920 MHz, 1995-2000 MHz, and 2020-2025 MHz and 2175-2180 MHz bands designated for AWS. The Commission announced its desire to provide licensees of this spectrum with flexibility to provide any fixed or mobile service consistent with the technical parameters of allocation.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 04-26384 Filed 11-29-04; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 02-78; FCC 04-252]

Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It To Be an Incumbent Local Exchange Carrier in Terry, MT Pursuant to Section 251(h)(2)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) solicits comment on the application of section 251(h)(2) of the Communications Act of 1934, as amended, regarding the reclassification of competitive local exchange carriers (LECs) to incumbent LECs. Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) filed a petition to be classified as an incumbent LEC. The Commission makes tentative conclusions addressing Mid-Rivers petition in part and poses questions concerning the application of section 251(h)(2) in Mid-Rivers case, as well as other similar cases.

DATES: Comments are due on or before December 30, 2004, and reply comments are due on or before January 14, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See

SUPPLEMENTARY INFORMATION for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Ian Dillner, Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1191, or at Ian.Dillner@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in WC Docket No. 02-78, adopted October 21, 2004, and released November 15, 2004 (NPRM). The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All filings should refer to WC Docket No. 02-78. Comments filed through ECFS can be sent as an electronic file via the Internet at <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is WC Docket No. 02-78. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfshelp@fcc.gov, and should include the following words in the regarding line of the message: "get form<your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. Parties filing by paper must also send three (3) courtesy copies to the attention of Janice M. Myles, Wireline Competition Bureau, Competition Policy Division, 445 12th Street, SW., Suite 5-C327, Washington, DC 20554, or via e-mail janice.myles@fcc.gov. Paper filings and courtesy copies must be delivered in the following manner. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings or courtesy copies for the Commission's Secretary and Commission staff will be accepted. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Each comment and reply comment must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

Synopsis of the Notice of Proposed Rulemaking

1. *Background.* Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers), a competitive LEC in the Terry, Montana exchange, filed a petition with the Commission requesting classification as an incumbent LEC in the Terry exchange pursuant to section 251(h)(2) of the Communications Act of 1934, as amended (the Act or Communication Act). This provision allows the Commission to determine "by rule" to treat a competitive LEC as an incumbent LEC if it satisfies a three-prong test: (1) The carrier occupies a market position comparable to an incumbent LEC; (2) the carrier has "substantially replaced" an incumbent LEC, and; (3) the reclassification serves the public interest, convenience, and necessity. 47 U.S.C. 251(h)(2).

2. Mid-Rivers, also an incumbent LEC in a nearby exchange, filed this petition as a result of its success in acquiring approximately 93 percent of the access

lines in the Terry exchange, almost exclusively on its own facilities. Mid-Rivers asserts that it should be classified as an incumbent LEC. Mid-Rivers' petition is supported by several parties, but also is opposed by two parties.

3. Notice of Proposed Rulemaking.

For Mid-Rivers to be treated as an incumbent LEC, the Commission must first find that it "occupies a position in the market for telephone exchange service with an area that is comparable to the position occupied by [an incumbent LEC]". 47 U.S.C.

251(h)(2)(A). The Commission seeks comment on how to define the relevant "area" under section 251(h)(2)(A). Assuming that the Terry exchange is the relevant "area," the Commission tentatively concludes that Mid-Rivers satisfies the first prong of the statutory standard, based on their provisioning of facilities based service to 93 percent of the exchange.

4. The second prong of section 251(h)(2)(B) requires a showing that Mid-Rivers has "substantially replaced" an incumbent LEC. 47 U.S.C. 251(h)(2)(B). The Commission set out a standard for fulfilling this requirement in the *Guam Declaratory Ruling and NPRM*, where the applicant LEC provides services "to all or virtually all" of the subscribers in the area. 62 FR 29320-01, *adopted*, 63 FR 42275-01. Again, assuming the relevant "area" is the Terry exchange, the Commission tentatively concludes that Mid-Rivers has "substantially replaced" Qwest, based on its 93 percent share of the exchange, satisfying section 251(h)(2)(B). 47 U.S.C. 251(h)(2)(B).

5. Additionally, the Commission seeks comment on whether the requested classification will fulfill the "public interest, convenience, and necessity" requirements under 251(h)(2)(C). As part of this inquiry, we also seek comment on the benefits of advanced services provided by Mid-Rivers and on whether the public interest is satisfied, possibly including consideration of broader market conditions. We also seek comment on the significance of universal service concerns, including possible effects on high-cost universal service support. Further, we seek comment on the relevance of access charge issues to the public interest analysis.

6. Another consideration, which the Mid-Rivers petition does not discuss, is the subsequent regulatory treatment of Qwest, as Qwest still fits the literal definition of an incumbent LEC. Because this is a novel issue for the Commission, and section 251(h) is silent on the matter, we seek comment on what regulatory treatment is appropriate

for legacy incumbent LECs.

Furthermore, the Commission seeks comment on whether automatic reclassification of the legacy incumbent LEC is an appropriate result of reclassifying the competitive LEC. The Commission also requests comment on whether two incumbent LECs can co-exist in an exchange, and the implications this would have on the current implementation of the Act including, universal service, and other rules predicated on a single incumbent LEC per area. The Commission has authority under section 10 of the Act to forbear from certain requirements and seeks comments on whether this is the required mechanism to address the situation.

7. Finally, the Commission seeks to develop a record on other considerations regarding this petition. We seek comment on whether revised Commission rules might resolve this situation. We also seek comment on current market trends that are related to this issue, and what underlying market and regulatory motivations are driving such a trend. We seek further comment on the process the Commission should use to address any further applications of this type. If the record indicates that a number of similar carriers are interested in filing similar applications, we seek comment on whether and how to administer an efficient process.

Paperwork Reduction Act

8. This NPRM does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any proposed "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Initial Regulatory Flexibility Analysis

9. As required by the RFA, the Commission has prepared this IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are sought on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for SBA Advocacy.

1. Need for, and Objectives of, the Proposed Rules

10. The Commission initiates this rulemaking proceeding because the

Mid-Rivers' petition raises novel and difficult questions implicating several of the Commission's major policies affecting LECs of all sizes, including local competition, universal service, and access charges. In this proceeding, we seek comment on whether Mid-Rivers satisfies the requirements of section 251(h)(2) to be classified as an incumbent LEC in Terry, Montana. To this end, the Commission makes tentative conclusions that Mid-Rivers satisfies the first two statutory prongs of section 251(h)(2). However, the Commission will weigh these tentative conclusions against the alternative possibility that Mid-Rivers does not satisfy the standards set forth in the Act. The Commission also plans to consider whether the petition satisfies the third prong of section 251(h)(2)—the public interest standard—and will weigh the benefits of granting the application against other considerations, such as the impact on other major Commission policies. Furthermore, the Commission plans to review: (1) The subsequent regulatory treatment of Qwest, including whether two incumbent LECs can serve the same exchange, and whether the Commission is authorized to reclassify Qwest as a competitive LEC; (2) whether the Act permits expected future applications of this type to be decided by final order rather than by rulemaking; and (3) the appropriate regulatory requirements for classification changes such as these. Thus, we ask interested parties to address how the Commission can best balance its objective to advance local competition and other policy goals within the existing statutory and regulatory framework. The Commission also plans to consider the various alternative approaches, as described in the Notice of Proposed Rulemaking.

2. Legal Basis

11. The legal basis for any action that may be taken pursuant to this Notice is contained in sections 4, 10, 201-202, 214, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 160, 201-204, 214, 303, and 403, section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157nt, and §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216, of the Commission's rules, 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Would Apply

12. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of

small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

13. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted in this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

14. We have included small incumbent local exchange carriers 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." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

15. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to

Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

16. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,310 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

17. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 563 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 563 carriers, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 14 carriers have reported that they are "Shared-Tenant Service Providers," and all 14 are estimated to have 1,500 or fewer employees. In addition, 37 carriers have reported that they are "Other Local Service Providers." Of the 37, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed action.

18. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 281 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

19. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

20. *Prepaid Calling Card Providers*. The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

21. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, OSPs, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is

small if it has 1,500 or fewer employees. According to Commission's data, 65 companies reported that their primary telecommunications service activity was the provision of other toll services. Of these 65 companies, an estimated 62 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

22. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small. Broadband 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. 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." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards 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. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 305, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

23. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. 65 FR 35875, June 6, 2000. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small

or very small entity and won 311 licenses.

24. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

25. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies proposed herein.

26. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint

Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.

27. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

28. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

29. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional

12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

30. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million. "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

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

31. The Commission in this Notice of Proposed Rulemaking makes tentative conclusions as to some, but not all of the necessary requirements of section 251(h)(2) for a competitive LEC, Mid-Rivers, to be declared an incumbent LEC. Should the Commission decide to find, after reviewing the record, that Mid-Rivers satisfies the requirements of section 251(h)(2) to be declared an incumbent LEC, and should the Commission make a finding as to the appropriate regulatory classification of the legacy incumbent LEC Qwest, the filing and compliance requirements of both Mid-Rivers and Qwest could potentially change. This is because incumbent LEC status often entails additional regulatory obligation and our decision on how to treat the legacy incumbent LEC could reduce Qwest's regulatory obligation. The Commission seeks comment in this Notice of Proposed Rulemaking regarding what, if any, broadly applicable rules would be necessary to properly implement this provision of the Act. Without more certainty about what rules, if any, the Commission will choose to adopt, we cannot accurately estimate the cost of compliance by small carriers. We therefore seek comment on the types of burdens carriers could face if the

proposed recommendations are adopted. Entities, especially small businesses, are encouraged to quantify, if possible, the costs and benefits of potential reporting, recordkeeping, and other compliance requirements.

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

32. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

33. While the Commission's primary concern is to implement the provisions of the Act, the Commission also plans to evaluate any adverse effect that its review of issues in this proceeding will have on small business entities. Our tentative conclusions that Mid-Rivers satisfies two of the three prongs of the statutory standard apply irrespective of the petitioner's size. However, some of the regulations and obligations that pertain to the incumbent LEC status that Mid-Rivers seeks are, by statute, limited in many circumstances because the Act exempts certain small incumbent local exchange telephone companies from the significant obligations of section 251(c). Thus, because Mid-Rivers qualifies for the exemption because of its small size, if our tentative conclusions are adopted as a part of an order granting the relief requested by Mid-Rivers, it is most likely that Mid-Rivers will not be subject to many of the costly regulations that generally pertain to incumbent LECs. Finally, we also consider procedural mechanisms that, if warranted, could potentially reduce the burdens on small entities that wish to seek similar treatment from the Commission. While it remains unclear what effect the alternative choices we face in this proceeding will have on small business entities, establishing this rulemaking will create a full record upon which we can more capably weigh these matters.

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

34. None.

Ordering Clause

Accordingly, it is ordered that the Notice of Proposed Rulemaking is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04-26385 Filed 11-29-04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT66

Endangered and Threatened Wildlife and Plants; Proposed Critical Habitat Designation for the Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis for the proposed designation of critical habitat for Buena Vista Lake shrew in California under the Endangered Species Act of 1973, as amended (Act). We are also reopening the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as part of this reopening of the comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept all comments and information received on or before December 15, 2004. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor,

Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, CA 95825, or by facsimile 916/414-6710.

(2) You may hand-deliver written comments to our office, at the address given above.

(3) You may send comments by electronic mail (e-mail) to: *BVLS_pCH@fws.gov*. Please see the "Public Comments Solicited" section below for file format and other information about electronic filing. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule, will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft economic analysis for the proposed designation of critical habitat for Buena Vista Lake shrew by contacting the Sacramento Fish and Wildlife Office at the above address. The draft economic analysis and the proposed rule for critical habitat designation are also available on the Internet at <http://sacramento.fws.gov/>. In the event that our Internet connection is not functional, please obtain copies of documents directly from the Sacramento Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office, at the address above (telephone 916/414-6600; facsimile 916/414-6710).

SUPPLEMENTARY INFORMATION:

Public Comment Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning our draft economic analysis and the proposed rule to designate critical habitat for the Buena Vista Lake shrew. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of shrew habitat, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area

and their possible impacts on proposed habitat, specifically impacts of the designation on the operation and maintenance of irrigation canals, and on existing and any planned future oil and gas activities within or near the proposed designation;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation of critical habitat; in particular, any impacts on small entities or families;

(5) Whether the economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not, what costs are overlooked;

(6) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(8) Assumptions reflected in the economic analysis regarding land use practices and current, planned, or reasonably foreseeable activities in the subject areas, including comments or information relating to the potential effects that the designation could have on private landowners as a result of actual or foreseeable State and local government responses due to the California Environmental Quality Act;

(9) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation; and

(11) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

All comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and proposed rule by any one of several methods (see **ADDRESSES** section).

Please submit Internet comments to *BVLS_pCH@fws.gov* in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: Buena Vista Lake shrew Critical Habitat" in your e-mail subject header, and your name and return