

(f) Filing requirements concerning applications for new temporary fixed earth station facilities operating in frequency bands shared co-equally with terrestrial fixed stations.

(1) When the initial location of the temporary fixed earth station's operation is known, the applicant shall provide, as part of the Form 312 application, a frequency coordination report in accordance with § 25.203 for the initial station location.

(2) When the initial location of the temporary fixed earth station's operation is not known at the time the application is filed, the applicant shall provide, as part of the Form 312 application, a statement by the applicant acknowledging its coordination responsibilities under § 25.277.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 02-386; FCC 05-29]

#### Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts new rules to facilitate the exchange of customer account information between Local Exchange Carriers (LECs) and Interexchange Carriers (IXCs) and to establish carriers' responsibilities with respect to such exchanges.

**DATES:** The rules in this document contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date for these rules. Written comments by the public on the new and modified information collections are due July 5, 2005.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications

Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov), and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to [Kristy.L.LaLonde@omb.eop.gov](mailto:Kristy.L.LaLonde@omb.eop.gov), or via fax at (202) 395-5167.

**FOR FURTHER INFORMATION CONTACT:** Lisa Boehley, Consumer & Governmental Affairs Bureau at (202) 418-7395 (voice), or e-mail [Lisa.Boehley@fcc.gov](mailto:Lisa.Boehley@fcc.gov). For additional information concerning the PRA information collection requirements contained in this document, contact Leslie Smith at (202) 418-0217, or via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**SUPPLEMENTARY INFORMATION:** On April 19, 2004, the Commission included in its *Notice of Proposed Rulemaking (NPRM), Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, published at 69 FR 20845, April 19, 2004, the 60 day PRA notice that sought comment on whether the Commission should impose mandatory minimum Customer Account Record Exchange (CARE) obligations on all local and interexchange carriers and, in specified situations, require carriers to transmit to involved carriers certain CARE codes designed to provide specific billing and other essential customer data. In addition, the Commission questioned whether adopting a mandatory minimum CARE standard for wireline-to-wireless porting would impose a burden on local exchange carriers and/or commercial mobile radio service (CMRS) providers, and sought input on what steps might be taken to minimize any such burden. Finally, the Commission sought comment on proposals for addressing billing issues in wireline-to-wireless number porting situations. On February 25, 2005, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking, Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, in which the Commission required the exchange of certain information, but determined not to require the use of particular CARE codes for the exchange of such information. In addition, the Commission declined to adopt specific performance measurements for the timeliness and completeness of the transfer of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs). Finally, the Commission

determined that carriers subject to these requirements may use a variety of transmission mediums for the required information exchanges. This *Report and Order* contains new information collection requirements subject to the PRA of 1995, Public Law 104-13. These will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. This *Report and Order* addresses issues arising from *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on all Local and Interexchange Carriers, Notice of Proposed Rulemaking (NPRM)*, CG Docket No. 02-386, FCC 04-50; published at 69 FR 20845, April 19, 2004. Copies of this document and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The complete text of this decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: <http://www.bcpiweb.com> or call 1-800-378-3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Report and Order* can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/pol>.

#### Paperwork Reduction Act of 1995 Analysis

This *Report and Order* contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the *Report and Order* as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. Public and agency comments are due July 5, 2005. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment

on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” In the present document, the Commission undertook to minimize the burden of the new rules on small businesses and small entities. For example, the *Report and Order* affords carriers flexibility in both the format and medium of information exchanges and, thus, does not require carriers to use Customer Account Record Exchange (CARE) or other automated methods, unless they so choose. In addition, in response to rural and small carrier concerns, the Commission rejected suggestions to impose specific time limits or performance measurements on the exchange of customer account information. These determinations appear to be consistent with the views expressed by a number of small and rural carriers in the Commission’s *Report and Order* who urge that if the Commission adopts mandatory standards it should “require carriers to exchange information at specific times, but refrain from micro-managing the methods the carriers use to do so”.

#### Synopsis

In this *Report and Order*, the Commission establishes mandatory, minimum standards governing the exchange of customer account information between LECs and IXC. In taking this action, we do not prescribe the use of a particular notification format or medium for the transfer of customer account information, such as Customer Account Record Exchange (CARE), and, instead, identify the situations in which information exchanges must take place and the obligations of particular carriers with respect to those exchanges. Under the rules we adopt, a LEC will be required to supply customer account information to an IXC when: (1) The LEC has placed an end user on the IXC’s network; (2) the LEC has removed an end user from the IXC’s network; (3) an end user that is presubscribed to the IXC makes certain changes to her account information via her LEC; (4) the IXC has requested billing, name, and address (“BNA”) information for an end user who has usage on the IXC’s network but for whom the IXC does not have an existing account; and (5) the LEC rejects an IXC-initiated PIC Report and Order. In addition, an IXC will be required to supply customer account information to a LEC when an end user contacts the IXC directly either to select or to remove the IXC as his PIC. The Commission also requires carriers to provide the required notifications promptly and without

unreasonable delay. Finally, we require carriers to exercise reasonable efforts to ensure that the required data transmissions are complete and accurate.

#### Final Regulatory Flexibility Certification (FRFA)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA) (*see* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (*SBREFA*), Public Law Number 104–121, Title II, 110 Stat. 857 (1996), an Initial Regulatory Flexibility Analysis (*IRFA*) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) released by the Federal Communications Commission (Commission) on March 25, 2004. (*See Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, CG Docket No. 02–386, Notice of Proposed Rulemaking, FCC 04–50, released March 25, 2004 (“*NPRM*”), a summary of the *NPRM* was published in the **Federal Register** on April 19, 2004. (*See* 69 FR 20845). The Commission sought written public comments on the proposals contained in the *NPRM*, including comments on the *IRFA*. Only two comments filed in this proceeding were specifically identified as comments addressing the *IRFA*; however comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (*FRFA*) conforms to the RFA. (*See* 5 U.S.C. 604).

#### Need for, and Objectives of, the Report and Order

A group of carriers including the Bell Operating Companies, several independent telephone companies, and the then-existing long distance carriers, developed the Customer Account Record Exchange (“CARE”) process in response to the break-up of the Bell System and the introduction of competitive long distance services. In the *Report and Order*, to facilitate equal access and cooperation mandated by the Modified Final Judgment, the industry created the Alliance for Telecommunications Industry Solutions (“ATIS”). ATIS develops and promotes technical and operational standards for communications and related information technologies worldwide. ATIS’ 124 member companies represent all segments of the telecommunications industry and participate in ATIS’ open industry committees and forums. ATIS in turn created the Ordering and Billing

Forum (“OBF”), which established voluntary CARE standards in the industry. These voluntary standards were developed to allow LECs to comply with their obligation to provide IXCs with access equal in type, quality, and price to that provided to AT&T and its affiliates. Thus, the CARE standards generally were created to facilitate the transfer of customer account information from a customer’s incumbent local exchange carrier (“ILEC”) to the appropriate IXC(s) when a customer elected to change long distance carriers or wished to modify his or her BNA information. The transfer of CARE data in these situations was designed to enable customers to move seamlessly from one IXC to another and to ensure that the appropriate IXC receives accurate customer account information in a timely manner.

In November of 2002, AT&T, Sprint Corporation, and MCI, Inc. (Joint Petitioners) filed a petition asking the Commission to initiate a rulemaking proceeding to implement mandatory, minimum standards governing the exchange of customer account information between LECs and IXCs and to adopt CARE as the prescribed format for such exchanges. The Joint Petitioners argued that mandatory, minimum standards are needed to ensure the exchange of information that carriers require to maintain accurate billing records and to deliver quality customer service and asked the Commission to initiate a rulemaking proceeding to mandate particular CARE codes and data exchange situations for communications between all wireline carriers. The Joint Petitioners contend that the voluntary exchange of information worked relatively well until the Telecommunications Act of 1996 (“the Act”). The passage of the Act created competitive LECs (“CLECs”), many of which do not participate in the voluntary CARE exchange, or do not provide appropriate information on a timely basis or with a quality or format upon which IXCs can depend. The Joint Petitioners proposed that all LECs and IXCs be required, in specified situations, to transmit to other carriers’ particular CARE codes that are designed to provide particular billing and/or other “essential” customer account information.

The *NPRM* sought comment as to whether the Commission should adopt mandatory, minimum standards governing the exchange of customer account information between LECs and IXCs. In addition, in the *IRFA*, the Commission sought comment on the

effect of the proposed policies and rules on small business entities.

In this *Report and Order*, the Commission establishes mandatory, minimum standards governing the exchange of customer account information between LECs and IXC. In taking this action, we do not prescribe the use of a particular notification format or medium for the transfer of customer account information, such as CARE codes, and, instead, identify situations in which information exchanges must take place and the obligations of particular carriers with respect to those exchanges. We reach this conclusion in light of the considerable record evidence demonstrating that information needed by carriers to execute customer requests in a timely and efficient manner and to properly bill customers is not being consistently provided by all LECs and by all IXCs, thereby often resulting in customer migration delays, consumer confusion and problems such as cramming, slamming, and double billing.

#### **Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

Two entities filed comments specifically addressing the proposed rules and policies presented in the *IRFA*. The Rural Incumbent Local Exchange Carriers ("Rural ILECs") filed the most comprehensive analysis on the impact of the proposed rules on small or rural carriers. The Rural ILECs urged the Commission to exempt small ILECs from the reporting requirements, arguing that there was no justification for the imposition of new regulations on small ILECs. In the alternative, the Rural ILECs requested that the Commission exempt at least those ILECs that participate in centralized equal access networks where the centralized equal access network provides reports to other carriers. In the event that the Commission did not carve out an exemption for such ILECs, the Rural ILECs suggested that the Commission only mandate specific exchange situations and allow all carriers the choice of media to transmit customer account data. (Rural ILECs Comments at 16 (specifically that the Commission could specify the events that trigger the exchange of information, but not require the use of specific CARE Transaction Code Status Indicators (TCSIs)). The Rural ILECs indicated that allowing ILECs to continue to exchange information using the formats and media they currently use, on the schedules they use, will minimize costs of compliance for the rural carriers. The

Rural ILECs explain that if they are required to send customer account information on a more frequent basis or use codes not currently used, they would face increasing costs (*see* Rural ILECs Comments on the *IRFA* at 5, maintaining that if the ILEC were to generate reports twice a week, the additional burden may be 0.5 to 1 hour, depending on whether the reports were created by hand or by computer, which amounts to 26 to 52 hours per year per ILEC. If applicable to 1,000 ILECs, the total additional burden for all small ILECs could be 26,000 to 52,000 hours per year). For example, they might incur costs for additional staff time to process reports, or for the use of modified software to incorporate codes not currently used, or for the purchase of the ATIS OBF Equal Access Subscription CARE/Industry Support Interface. (*See* Rural ILECs Comments on the *IRFA* at 5–6 contending that the ATIS document costs \$550 and that with 1,000 small ILECs, the cost to the industry may be \$550,000 for the initial purchase of the ATIS document and for each revision of that document).

National Telecommunications Cooperative Association ("NTCA") maintains that the Commission should consider less burdensome alternatives before imposing mandatory requirements on small, rural ILECs. Specifically, NTCA argues that any new cost burdens associated with mandatory standards should be placed squarely on the IXC beneficiaries, rather than on small ILECs. NTCA further states that, should the Commission mandate the exchange of information, small rural ILECs must be able to recover their costs in the interstate jurisdiction through access charges or other mechanisms. Finally, NTCA indicates that the *IRFA* failed to identify federal rules that may duplicate, overlap or conflict with the proposed rules and suggests that the Customer Proprietary Network Information ("CPNI") requirements under § 222 of the Act and the Commission's rules for changing long distance service potentially duplicate, conflict with, or overlap the proposed rules.

Other parties filed comments that specifically mentioned small businesses. SBC indicated that small businesses must be able to retain the flexibility to use third party vendors to participate in CARE and to transmit data to these third parties in a variety of ways. SBC also noted that, if the Commission is concerned that mandatory minimum CARE standards would prove too burdensome to small businesses, it could exempt those businesses that demonstrate that

compliance would be too economically burdensome. TDS Telecommunications Corp. ("TDS") maintains that because the Joint Petitioners' proposal "lacks flexibility and suitability to the current voluntary standards," it would unduly burden small and rural LECs. Texas Statewide Telephone Cooperative, Inc. ("TSTCI") also suggested that while small and rural carriers are currently using some CARE codes, they lack the resources to be active participants in the ATIS/OBF forums. Thus, it could potentially be burdensome on these carriers should the Commission require compliance with the ATIS/OBF standards. Frontier similarly maintains that small and rural LECs lack the necessary resources to implement costly new processes.

#### **Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

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 (*see* 5 U.S.C. 601(3) incorporating by reference the definition of "small-business concern" in the 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 comments, 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**."). Under the Small Business Act, a "small business concern" is one that: (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). (*See* 15 U.S.C. 632).

We have included small incumbent LECs in this 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 wireline telecommunications business having 1,500 or fewer employees), and "is not dominant in its field of operation." (*See* 13 CFR 121.201, NAICS code 517110). The

SBA's Office of Advocacy 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. (See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, 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 5 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. See 13 CFR 121.102(b)). We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

**Incumbent Local Exchange Carriers.** Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees (see 13 CFR 121.201, NAICS code 517110). According to the FCC's Telephone Trends Report data, 1,310 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services (see FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p. 5—5 (May 2004), (*Telephone Trends Report*). This source uses data that are current as of October 22, 2003). 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 the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

**Competitive Local Exchange Carriers and Competitive Access Providers.** Neither the Commission nor the SBA has developed specific small business size standards for providers of competitive local exchange services or competitive access providers (CAPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees (see 13 CFR 121.201, NAICS code 517110). According to the FCC's Telephone Trends Report data, 563 companies reported that they were engaged in the

provision of either competitive access provider services or competitive local exchange carrier services (see *Telephone Trends Report*, Table 5.3. The data are grouped together in the *Telephone Trends Report*). Of these 563 companies, an estimated 472 have 1,500 or fewer employees, and 91 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange service and CAPs are small entities that may be affected by the rules.

**Local Resellers.** The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees (see 13 CFR 121.201, NAICS code 517310). According to the FCC's Telephone Trends Report data, 127 companies reported that they were engaged in the provision of local resale services (see *Telephone Trends Report*, Table 5.3). Of these 127 companies, an estimated 121 have 1,500 or fewer employees, and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

**Toll Resellers.** The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees (see 13 CFR 121.201, NAICS code 517310). According to the FCC's Telephone Trends Report data, 645 companies reported that they were engaged in the provision of toll resale services (see *Telephone Trends Report*, Table 5.3). Of these 645 companies, an estimated 619 have 1,500 or fewer employees, and 26 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

**Interexchange Carriers.** Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees (see 13 CFR 121.201, NAICS code 517110). According to the FCC's Telephone Trends Report data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services (see *Telephone Trends Report*, Table 5.3). Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and

27 have more than 1,500 employees. Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

**Operator Service Providers.** Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees (see 13 CFR 121.201, NAICS code 517110). According to the FCC's Telephone Trends Report data, 21 companies reported that they were engaged in the provision of operator services (see *Telephone Trends Report*, Table 5.3). Of these 21 companies, an estimated 20 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of operator service providers may be affected by the rules.

**Prepaid Calling Card Providers.** The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees (see 13 CFR 121.201, NAICS code 517310). According to the FCC's Telephone Trends Report data, 40 companies reported that they were engaged in the provision of prepaid calling cards (see *Telephone Trends Report*, Table 5.3). Of these 40 companies, all 40 are estimated to have 1,500 or fewer employees. Consequently, the Commission estimates that all or most prepaid calling card providers may be affected by the rules.

**Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees (see 13 CFR 121.201, NAICS code 517110). According to the FCC's Telephone Trends Report data, 65 carriers reported that they were engaged in the provision of "Other Toll Services." (See *Telephone Trends Report*, Table 5.3). Of these 65 carriers, an estimated 62 have 1,500 or fewer employees, and three have more than 1,500 employees. Consequently, the

Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

#### **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

The Commission adopts rules to require minimum standards necessary to facilitate the exchange of customer account information between LECs and IXC. We require that the exchange of information take place in certain situations, and we describe the obligations of particular carriers with respect to those exchanges. The rules require the exchange of information in the following specific situations (described in detail in the *Report and Order*, paragraphs 31–57): (1) A customer is placed on an IXC's network; (2) a customer is removed from an IXC's network; (3) a customer's account information changes; (4) a customer changes his local service provider; (5) an IXC requests customer BNA information; (6) a LEC rejects an IXC-initiated PIC Report and Order; and (7) an IXC initiates a PIC Report and Order. However, these rules do not prescribe a particular format or delivery method (e.g., the CARE process) for the transfer of customer account information and instead focus more generally on information sharing in particular situations.

By focusing on information exchanges in particular circumstances, rather than mandating specific formats or transmission mediums for those exchanges, we have attempted to minimize the potential costs or burdens associated with implementing these requirements, particularly for small and rural carriers. We recognize that the CARE process could add burdens to smaller ILECs that currently do not use CARE codes but nevertheless provide information to other carriers. Thus, we have determined not to require those carriers that currently are providing, consistent with the rules described in this *Report and Order*, timely and adequate notifications to other carriers pursuant to inter-carrier agreements or other non-CARE processes, to incur potentially unnecessary expenses associated with modifying their current processes. Thus, to avoid imposing any potentially unnecessary burdens on small and rural carriers, we do not mandate participation in CARE. In addition, although we require that the transmission of customer account information be processed without unreasonable delay, we determined not to adopt more specific timeliness measures in light of the widely divergent proposals and needs of

commenters, nor do we mandate the use of the OBF-developed CARE/ISI documents to ensure completeness of data transmissions. Our determination not to adopt specific performance measurements at this time should minimize any administrative burdens on small or rural LECs to comply with the new rules.

We believe that the adoption of nationwide rules requiring the exchange or transfer of customer account information in the situations identified in the Joint Petition will help to alleviate the billing and provisioning problems described in this proceeding, as well as the associated customer confusion and customer complaints that are documented in the record before us. We further believe that the need for mandatory minimum standards to facilitate the exchange of customer account information between LECs and IXCs outweighs the administrative and cost burdens associated with the increase in compliance requirements for those carriers not currently exchanging such information in a timely manner.

#### **Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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. 5 U.S.C. 603.

We believe that effective communications between LECs and IXCs are critical to an IXC's ability to maintain accurate billing records and to honor customer PIC selections and other customer requests. Today, there is no uniform, nationwide process by which all carriers exchange customer account information. The records show that basic customer account information that carriers require to ensure accurate billing of end user customers and to execute end user customer requests is not provided by all LECs and by all IXCs. Thus, we adopt rules to ensure that such information is exchanged and without unreasonable delay. Recognizing the potential compliance burdens on carriers—particularly small

or rural carriers—associated with any new rules in this area, we considered several alternatives to address the problems identified in the record.

First, we considered not mandating the exchange of information among LECs and IXCs, but permitting such exchanges to continue on a voluntary basis. Voluntary standards would arguably impose no additional compliance burdens on small or rural LECs. We concluded, however, that customer account information that is within the exclusive control of a customer's LEC is not always obtainable by an IXC through voluntary negotiations with the LEC or in reliance on voluntary ATIS OBF standards. We believe that voluntary standards fall short because they do not result in industry-wide participation. Thus, without such industry-wide participation, customers have no assurance that their carrier changes and other requests will be acted upon in a timely or efficient manner, if at all. Voluntary industry standards are inadequate to address the problems described in the record.

Second, we considered exempting small and rural LECs from the information exchange requirements. However, in light of the numerous measures we have taken to minimize burdens on small LECs and the fact that without uniform participation (as described above), the problems faced by IXCs, LECs and their customers with completing PIC changes and executing customers' requests would not be adequately addressed, we opted not to carve out such an exemption. We found that certain basic customer account information that is needed by IXCs to provide service and properly bill their customers is not reasonably available to the IXC from sources other than the customer's LEC, whether that LEC is small or not. Thus, we concluded that mandatory standards should be established for communications among all LECs and all IXCs.

Third, we determined not to mandate information exchanges in every situation originally identified by the Joint Petitioners and other commenters. Doing so might prove efficient for those carriers currently using the CARE process developed by ATIS/OBF. However, by limiting the universe of mandated information exchanges to those situations that we believe are most critical to addressing the problems identified in the record of this proceeding, we anticipate that the costs or burdens associated with implementing the requirements we adopt in this *Report and Order* will be minimal. In addition, we declined to

require carriers to use the specific CARE codes developed by ATIS/OBF to facilitate the exchange of information among LECs and IXCs. While mandating the use of CARE codes might provide greater uniformity, such action could potentially impose unnecessary burdens on small or rural carriers that currently do not participate in CARE. We also refrained from prescribing the use of particular CARE codes because we recognize that, among carriers currently participating in CARE, few of those carriers' operating systems, if any, support an identical set of CARE codes.

Fourth, we considered not adopting specific performance measurements for the exchange of customer account information (timeliness and method of transmission such as facsimile, mail, electronic e-mail, cartridge, etc). We concluded that, while we should require notifications regarding customer account information to be completed promptly and without unreasonable delay, that more specific timeliness measures were not warranted at this time, given the widely divergent proposals from commenters and the potential burden on smaller LECs. We also do not require carriers to refer to the CARE/ISI document to ensure the completeness of date transmissions, although we require carriers to exercise reasonable efforts to ensure that the data transmitted is accurate.

Fifth, we considered using the NARUC model rules as a template upon which states could build their own customized individual standards. We concluded, however, that the NARUC model rule is not likely to ensure industry-wide participation or a uniform, minimum standard. Although the NARUC model rule may prove useful to states wishing to adopt more expansive requirements than those the Commission would adopt, the model rule is unlikely to result in the adoption, on a nationwide basis, of the minimum standards that we believe are needed to address the billing and provisioning problems at issue. In addition, absent Commission rules in this area, small carriers may face greater compliance burdens associated with rules adopted on a state-by-state basis.

#### Report to Congress

The Commission will send a copy of the *Report and Order*, including this Final Regulatory Flexibility Analysis (FRFA), in a report to be sent to Congress and the Comptroller General pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small

Business Administration. A copy of the *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

Pursuant to the authority contained in sections 1–4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 222, 258, and 303(r), the *Report and Order* is adopted.

Pursuant to the authority contained in sections 1–4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 222, 258, and 303(r), Part 64 of the Commission's rules, 47 CFR Part 64, is amended as set forth in the Rule Changes.

The rules in this *Report and Order* contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). Because many of the rules and requirements contained in this *Report and Order* and in the Rule Changes contain information collection requirements under the PRA, the rules and information collection requirements *shall not become effective* until the information collection requirements have been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

Pursuant to the authority contained in §§ 1–4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 222, 258, and 303(r), and § 1.2 of the Commission's rules, 47 CFR 1.2, the Petition for Declaratory Ruling filed by AmeriCatel Corporation on September 5, 2002, is granted in part and denied in part, to the extent provided herein.

Pursuant to the authority contained in §§ 1–4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 222, 258, and 303(r), and § 1.407 of the Commission's rules, 47 CFR 1.407, the Petition for Rulemaking filed by AT&T Corp, Sprint Corporation, and WorldCom, Inc. on November 22, 2002, is granted in part and denied in part, to the extent provided herein.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Report and Order* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

#### Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

#### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Subpart CC is added to read as follows:

#### Subpart CC—Customer Account Record Exchange Requirements

Sec.

- 64.4000 Basis and purpose.
- 64.4001 Definitions.
- 64.4002 Notification obligations of LECs.
- 64.4003 Notification obligations of IXCs.
- 64.4004 Timeliness of required notifications.
- 64.4005 Unreasonable terms or conditions on the provision of customer account information.
- 64.4006 Limitations on use of customer account information.

**Authority:** 47 U.S.C. 154, 201, 202, 222, 258 unless otherwise noted.

#### § 64.4000 Basis and purpose.

(a) *Basis.* The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to facilitate the timely and accurate establishment, termination, and billing of customer telephone service accounts.

#### § 64.4001 Definitions.

Terms in this subpart have the following meanings:

(a) *Automatic number identification (ANI).* The term automatic number identification refers to the delivery of the calling party's billing telephone number by a local exchange carrier to any interconnecting carrier for billing or routing purposes.

(b) *Billing name and address (BNA).* The term billing name and address means the name and address provided to a [LEC] by each of its local exchange

customers to which the [LEC] directs bills for its services.

(c) *Customer*. The term customer means the end user to whom a local exchange carrier or interexchange carrier is providing local exchange or telephone toll service.

(d) *Interexchange carrier (IXC)*. The term interexchange carrier means a telephone company that provides telephone toll service. An interexchange carrier does not include commercial mobile radio service providers as defined by federal law.

(e) *Local exchange carrier (LEC)*. The term local exchange carrier means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under § 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.

(f) *Preferred interexchange carrier (PIC)*. The term preferred interexchange carrier means the carrier to which a customer chooses to be presubscribed for purposes of receiving intraLATA and/or interLATA and/or international toll services.

#### § 64.4002 Notification obligations of LECs.

To the extent that the information is reasonably available to a LEC, the LEC shall provide to an IXC the customer account information described in this section consistent with § 64.4004. Nothing in this section shall prevent a LEC from providing additional customer account information to an IXC to the extent that such additional information is necessary for billing purposes or to properly execute a customer's PIC Report and Order.

(a) *Customer-submitted PIC Report and Order*. Upon receiving and processing a PIC selection submitted by a customer and placing the customer on the network of the customer's preferred interexchange carrier at the LEC's local switch, the LEC must notify the IXC of this event. The notification provided by the LEC to the IXC must contain all of the customer account information necessary to allow for proper billing of the customer by the IXC including but not limited to:

- (1) The customer's billing telephone number, working telephone number, and billing name and address;
- (2) The effective date of the PIC change;
- (3) A statement describing the customer type (*i.e.*, business or residential);

(4) A statement indicating, to the extent appropriate, that the customer's telephone service listing is not printed in a directory and is not available from directory assistance or is not printed in a directory but is available from directory assistance;

(5) The jurisdictional scope of the PIC installation (*i.e.*, intraLATA and/or interLATA and/or international);

(6) The carrier identification code of the submitting LEC; and

(7) If relevant, a statement indicating that the customer's account is subject to a PIC freeze. The notification also must contain information, if relevant and to the extent that it is available, reflecting the fact that a customer's PIC selection was the result of:

- (i) A move (an end user customer has moved from one location to another within a LEC's service territory);
- (ii) A change in responsible billing party; or

(iii) The resolution of a PIC dispute.

(b) *Confirmation of IXC-submitted PIC Report and Order*. When a LEC has placed a customer on an IXC's network at the local switch in response to an IXC-submitted PIC Report and Order, the LEC must send a confirmation to the submitting IXC. The confirmation provided by the LEC to the IXC must include:

(1) The customer's billing telephone number, working telephone number, and billing name and address;

(2) The effective date of the PIC change;

(3) A statement describing the customer type (*i.e.*, business or residential);

(4) A statement indicating, to the extent appropriate, if the customer's telephone service listing is not printed in a directory and is not available from directory assistance, or is not printed in a directory but is available from directory assistance;

(5) The jurisdictional scope of the PIC installation (*i.e.*, intraLATA and/or interLATA and/or international); and

(6) The carrier identification code of the submitting LEC. If the PIC Report and Order at issue originally was submitted by an underlying IXC on behalf of a toll reseller, the confirmation provided by the LEC to the IXC must indicate, to the extent that this information is known, a statement indicating that the customer's PIC is a toll reseller.

(c) *Rejection of IXC-submitted PIC Report and Order*. When a LEC rejects or otherwise does not act upon a PIC Report and Order submitted to it by an IXC, the LEC must notify the IXC and provide the reason(s) why the PIC Report and Order could not be

processed. The notification provided by the LEC to the IXC must state that it has rejected the IXC-submitted PIC Report and Order and specify the reason(s) for the rejection (*e.g.*, due to a lack of information, incorrect information, or a PIC freeze on the customer's account). The notification must contain the identical data elements that were provided to the LEC in the original IXC-submitted PIC Report and Order (*i.e.*, mirror image of the original Report and Order), unless otherwise specified by this subsection. If a LEC rejects an IXC-submitted PIC Report and Order for a multi-line account (*i.e.*, the customer has selected the IXC as his PIC for two or more lines or terminals associated with his billing telephone number), the notification provided by the LEC rejecting that Report and Order must explain the effect of the rejection with respect to each line (working telephone number or terminal) associated with the customer's billing telephone number. A LEC is not required to generate a line-specific or terminal-specific response, however, and may communicate the rejection at the billing telephone level, when the LEC is unable to process an entire Report and Order, including all working telephone numbers and terminals associated with a particular billing telephone number. In addition, the notification must indicate the jurisdictional scope of the PIC Report and Order rejection (*i.e.*, intraLATA and/or interLATA and/or international). If a LEC rejects a PIC Report and Order because:

(1) The customer's telephone number has been ported to another LEC; or

(2) The customer has otherwise changed local service providers, the LEC must include in its notification, to the extent that it is available, the identity of the customer's new LEC.

(d) *Customer contacts LEC or new IXC to cancel PIC*. When a LEC has removed at its local switch a presubscribed customer from an IXC's network, either in response to a customer Report and Order or upon receipt of a properly verified PIC Report and Order submitted by another IXC, the LEC must notify the customer's former IXC of this event. The LEC must provide to the IXC the customer account information that is necessary to allow for proper final billing of the customer by the IXC including but not limited to:

(1) The customer's billing telephone number, working telephone number, and, billing name and address;

(2) The effective date of the PIC change;

(3) A description of the customer type (*i.e.*, business or residential);



(4) The jurisdictional scope of the lines or terminals affected (*i.e.*, intraLATA and/or interLATA and/or international); and

(5) The carrier identification code of the submitting LEC. If a customer changes PICs but retains the same LEC, the LEC is responsible for notifying both the old PIC and new PIC of the PIC change. The notification also must contain information, if relevant and to the extent that it is available, reflecting the fact that a customer's PIC removal was the result of:

(i) The customer moving from one location to another within the LEC's service territory, but where there is no change in local service provider;

(ii) A change of responsible party on an account; or

(iii) A disputed PIC selection.

(e) *Particular changes to customer's local service account.* When, according to a LEC's records, certain account or line information changes occur on a presubscribed customer's account, the LEC must communicate this information to the customer's PIC. For purposes of this subsection, the LEC must provide to the appropriate IXC account change information that is necessary for the IXC to issue timely and accurate bills to its customers including but not limited to:

(1) The customer's billing telephone number, working telephone number, and billing name and address;

(2) The customer code assigned to that customer by the LEC;

(3) The type of customer account (*i.e.*, business or residential);

(4) The status of the customer's telephone service listing, to the extent appropriate, as not printed in a directory and not available from directory assistance, or not printed in a directory but available from directory assistance; and

(5) The jurisdictional scope of the PIC installation (*i.e.*, intraLATA and/or interLATA and/or international). If there are changes to the customer's billing or working telephone number, customer code, or customer type, the LEC must supply both the old and new information for each of these categories.

(f) *Local service disconnection.* Upon receipt of an end user customer's request to terminate his entire local service account or disconnect one or more lines (but not all lines) of a multi-line account, the LEC must notify the PIC(s) for the billing telephone number or working telephone number on the account of the account termination or lines disconnected. In conjunction with this notification requirement, the LEC must provide to a customer's PIC(s) all account termination or single/multi-line disconnection change information

necessary for the PIC(s) to maintain accurate billing and PIC records, including but not limited to:

(1) The effective date of the termination/disconnection; and

(2) The customer's working and billing telephone numbers and billing name and address;

(3) The type of customer account (*i.e.*, business or residential);

(4) The jurisdictional scope of the PIC installation (*i.e.*, intraLATA and/or interLATA and/or international); and

(5) The carrier identification code of the LEC.

(g) *Change of local service provider.*

When a customer changes LECs, the customer's former LEC must notify the customer's PIC(s) of the customer's change in LECs and, if known, the identity of the customer's new LEC. If the customer also makes a PIC change, the customer's former LEC must notify the customer's former PIC(s) of the change and the new LEC must notify the customer's new PIC of the customer's PIC selection. If the customer's LEC is unable to identify the customer's new LEC, the former LEC must notify the customer's PIC of a local service disconnection as described in paragraph (f) of this section. The notification also must contain information, if relevant and to the extent that it is available, reflecting the fact that an account change was the result of:

(1) The customer porting his number to a new LEC;

(2) A local resale arrangement (customer has transferred to local reseller); or

(3) The discontinuation of a local resale arrangement.

(h) *IXC requests for customer BNA information.* Upon the request of an IXC, a LEC must provide the billing name and address information necessary to facilitate a customer's receipt of a timely, accurate bill for services rendered and/or to prevent fraud, regardless of the type of service the end user receives/has received from the requesting carrier (*i.e.*, presubscribed, dial-around, casual). In response to an IXC's BNA request for ANI, a LEC must provide the BNA for the submitted ANI along with:

(1) The working telephone number for the ANI;

(2) The date of the BNA response;

(3) The carrier identification code of the submitting IXC; and

(4) A statement indicating, to the extent appropriate, if the customer's telephone service listing is not printed in a directory and is not available from directory assistance, or is not printed in a directory but is available from directory assistance. A LEC that is

unable to provide the BNA requested must provide the submitting carrier with the identical information contained in the original BNA request (*i.e.*, the mirror image of the original request), along with the specific reason(s) why the requested information could not be provided. If the BNA is not available because the customer has changed local service providers or ported his telephone number, the LEC must include the identity of the new provider when this information is available.

#### **§ 64.4003 Notification obligations of IXCs.**

To the extent that the information is reasonably available to an IXC, the IXC shall provide to a LEC the customer account information described in this section consistent with § 64.4004. Nothing in this section shall prevent an IXC from providing additional customer account information to a LEC to the extent that such additional information is necessary for billing purposes or to properly execute a customer's PIC Report and Order.

(a) *IXC-submitted PIC Report and Order.* When a customer contacts an IXC to establish interexchange service on a presubscribed basis, the IXC selected must submit the customer's properly verified PIC Report and Order (*see* 47 CFR 64.1120(a)) to the customer's LEC, instructing the LEC to install or change the PIC for the customer's line(s) to that IXC. The notification provided by the IXC to the LEC must contain all of the information necessary to properly execute the Report and Order including but not limited to:

(1) The customer's billing telephone number or working telephone number associated with the lines or terminals that are to be presubscribed to the IXC;

(2) The date of the IXC-submitted PIC Report and Order;

(3) The jurisdictional scope of the PIC Report and Order (*i.e.*, intraLATA and/or interLATA and/or international); and

(4) The carrier identification code of the submitting IXC.

(b) *Customer contacts IXC to cancel PIC and to select no-PIC status.* When an end user customer contacts an IXC to discontinue interexchange service on a presubscribed basis, the IXC must confirm that it is the customer's desire to have no PIC and, if that is the case, the IXC must notify the customer's LEC. The IXC also is encouraged to instruct the customer to notify his LEC. An IXC may satisfy this requirement by establishing a three-way call with the customer and the customer's LEC to confirm that it is the customer's desire to have no PIC and, where appropriate, to provide the customer the opportunity



to withdraw any PIC freeze that may be in place. The notification provided by the IXC to the LEC must contain the customer account information necessary to properly execute the cancellation Report and Order including but not limited to:

(1) The customer's billing telephone number or working telephone number associated with the lines or terminals that are affected;

(2) The date of the IXC-submitted PIC removal Report and Order;

(3) The jurisdictional scope of the PIC removal Report and Order (*i.e.*, intraLATA and/or interLATA and/or international); and

(4) The carrier identification code of the submitting IXC.

#### **§ 64.4004 Timeliness of required notifications.**

Carriers subject to the requirements of this section shall provide the required notifications promptly and without unreasonable delay.

#### **§ 64.4005 Unreasonable terms or conditions on the provision of customer account information.**

To the extent that a carrier incurs costs associated with providing the notifications required by this section, the carrier may recover such costs, consistent with federal and state laws, through the filing of tariffs, via negotiated agreements, or by other appropriate mechanisms. Any cost recovery method must be reasonable and must recover only costs that are associated with providing the particular information. The imposition of unreasonable terms or conditions on the provision of information required by this section may be considered an unreasonable carrier practice under section 201(b) of the Communications Act of 1934, as amended, and may subject the carrier to appropriate enforcement action.

#### **§ 64.4006 Limitations on use of customer account information.**

A carrier that receives customer account information under this section shall use such information to ensure timely and accurate billing of a customer's account and to ensure timely and accurate execution of a customer's preferred interexchange carrier instructions. Such information shall not be used for marketing purposes without the express consent of the customer.

[FR Doc. 05-10974 Filed 6-1-05; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 622**

[Docket No. 040804277-5143-02; I.D. 072604A]

RIN 0648-AP02

#### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Rebuilding Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 22 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 22) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule provides the regulatory authority to implement a mandatory observer program for selected commercial and for-hire (charter vessel/headboat) vessels in the Gulf of Mexico reef fish fishery. In addition, consistent with the requirements of the Magnuson-Stevens Act, Amendment 22 establishes a stock rebuilding plan, biological reference points, and stock status determination criteria for red snapper in the Gulf of Mexico. The intended effect of this final rule is to contribute to ending overfishing and rebuilding the red snapper resource. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections.

**DATES:** This final rule is effective July 5, 2005.

**ADDRESSES:** Copies of the Regulatory Impact Review (RIR), Final Regulatory Flexibility Analyses (FRFA), Final Supplemental Environmental Impact Statement (FSEIS), and Record of Decision (ROD) may be obtained from Peter Hood, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone 727-570-5305; fax 727-570-5583; e-mail [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule must be submitted to Robert Sadler, Southeast Region, NMFS, at the above

address, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or 202-395-7285 (fax).

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, telephone: 727-570-5305, fax: 727-570-5583, e-mail: [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On August 3, 2004, NMFS published a notice of availability of Amendment 22 (69 FR 46518) and requested public comment on Amendment 22. On November 23, 2004, NMFS published the proposed rule to implement Amendment 22 (69 FR 68119) and requested public comment on the proposed rule. NMFS approved Amendment 22 on October 27, 2004. The rationale for the measures in Amendment 22 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

#### **Comments and Responses**

This section presents a summary of comments received on Amendment 22 and the associated proposed rule along with NMFS' responses. In addition, please see the section entitled Discussion of Potential Future Action which follows this section and addresses new preliminary information received after the approval of Amendment 22; the types of additional measures that may be required; and the procedures, consistent with the red snapper stock rebuilding plan, for consideration and future implementation of such measures as appropriate.

*Comment 1:* Placing observers on for-hire vessels could be a problem if carrying an observer would cause the number of persons on the vessel to exceed the passenger limits defined by the applicable United States Coast Guard (USCG) issued license for the vessel and operator. Unless one paying customer is denied a trip to make room for the observer, the vessel could be out of compliance with USCG regulations. This could cause economic harm.

*Response:* Amendment 22 directs NMFS to develop and manage an observer program for the commercial and for-hire reef fish fishery. When selecting vessels to carry observers, NMFS will consider appropriate factors, such as the suitability of vessels for